

Gerald Thompson  
November 06, 2024

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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

LANDSCAPE CONSULTANTS OF )  
TEXAS, INC., and )  
METROPOLITAN LANDSCAPE )  
MANAGEMENT, INC., )  
Plaintiffs, )  
v. ) Civil Action No. 4:23-cv-03516  
CITY OF HOUSTON, TEXAS, )  
and MIDTOWN MANAGEMENT )  
DISTRICT, )  
Defendants. )

ORAL VIDEOTAPED DEPOSITION OF

GERALD THOMPSON

November 6, 2024

ORAL VIDEOTAPED DEPOSITION OF GERALD THOMPSON,  
produced as a witness at the instance of the Defendants  
and duly sworn, was taken in the above-styled and  
numbered cause on the 6th day of November, 2024, from  
10:00 a.m. to 1:33 p.m., before Dawn McAfee, Certified  
Shorthand Reporter in and for the State of Texas,  
reported by computerized stenotype machine at the  
offices of Husch Blackwell LLP, 600 Travis Street, Suite  
2350, Houston, Texas 77002, pursuant to the Federal  
Rules of Civil Procedure and the provisions stated on  
the record or attached hereto.

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## ALSO PRESENT:

Mr. Orfelio De Ochoa Jr.  
HUSCH BLACKWELL LLP  
Mr. Bill Marsh - Videographer

Gerald Thompson  
November 06, 2024

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1 THE VIDEOGRAPHER: This is beginning of  
2 File Number 1 in the deposition of Gerald Thompson. The  
3 time is 10:27, and we're on the record. Would the court  
4 reporter please swear the witness?

5 GERALD THOMPSON,  
6 having been first duly sworn, testified as follows:

7 EXAMINATION

8 BY MR. STEPHENS:

9 Q. Sir, can you state and spell your name for our  
10 record, please.

11 A. Gerald Raymond Thompson. G-E-R-A-L-D, Raymond,  
12 R-A-Y-M-O-N-D, Thompson, T-H-O-M-P-S-O-N.

13 Q. All right. And I'll call you Mr. Thompson. My  
14 name is Ben Stephens. I'm a lawyer representing the  
15 City of Houston. Can you -- can you tell me, in your  
16 own words, what this lawsuit is about?

17 A. Well, quite frankly, the lawsuit is about  
18 discrimination against my companies from being able to  
19 fully and capably use our employees to perform contracts  
20 in the -- for the City of Houston. And because we are  
21 white owners with 95 percent Hispanic employees, it just  
22 seems very strange that we would have to do that. So,  
23 my main -- my main concern is to protect my employees,  
24 not someone else's employees, for payroll and things  
25 like that.

1 Q. Okay. And, in your own words, what do you want  
2 the judge to do in this lawsuit?

3 A. I would like him to throw out that program, the  
4 minority program, for the City of Houston.

5 Q. When you say "minority program," we're gonna be  
6 talking about that program a lot today. I'm probably  
7 gonna call it the MBE program. If I call it that, do  
8 you know what I'm talking about?

9 A. Yes.

10 Q. Okay. And it's the program you just mentioned.  
11 That's the program you're challenging in this lawsuit?

12 A. Yes.

13 Q. And you mentioned a couple of companies that  
14 you believe are being discriminated against by the City  
15 of Houston. Those companies are Landscape Consultants  
16 of Texas, Inc., and Metropolitan Landscape Consultants;  
17 is that right?

18 A. Management.

19 Q. Metropolitan Landscape Management.

20 A. Inc.

21 Q. Okay. I'm gonna call the first one of those  
22 Landscape, and I'm gonna call the second one of those  
23 Metropolitan, for short, so that I'm not saying the  
24 whole name every time. Can we just agree that that's  
25 how we'll refer to these two companies for the purposes

1 of this deposition?

2 A. Yes.

3 Q. Okay. I will do my very best to ask you clear  
4 questions. I'll just ask that you give me clear  
5 answers. And if you don't understand my question or,  
6 you know, I'm speaking too fast or whatever, that you  
7 tell me, so that I can ask you a question you can  
8 understand. Is that fair?

9 A. Yes.

10 Q. Is there any reason that you wouldn't be able  
11 to testify fully and truthfully today?

12 A. No.

13 Q. Okay. Have you ever been deposed previously?

14 A. Yes.

15 Q. Okay. In what context?

16 A. It was a business deal 20 years ago.

17 Q. Okay. Is that the only occasion?

18 A. Yes.

19 Q. Have you given testimony under oath in any  
20 other context, other than a deposition?

21 A. No.

22 Q. Okay. How old are you, sir?

23 A. Sixty -- almost 67.

24 Q. And did you grow up in Houston, or did you grow  
25 up elsewhere?

1 A. Elsewhere.

2 Q. Where did you grow up?

3 A. Grand Rapids, Michigan.

4 Q. Okay. How long did you live in -- in Michigan?

5 A. Until I was 32 years old.

6 Q. Did you go to college in Michigan?

7 A. Yes.

8 Q. Where did you attend?

9 A. Western Michigan University.

10 Q. How did you make your way to Houston?

11 A. I had a headhunter approach me to come down to  
12 Texas and run their South Coast, or Southwest District  
13 region, for a company called RPS, which is now part of  
14 Federal Express.

15 Q. Which is now what? I'm sorry.

16 A. It's now part -- it used to be RPS Roadway  
17 Package Systems, which is now Federal Express.

18 Q. FedEx?

19 A. FedEx, yeah -- FedEx Ground.

20 Q. Okay. I understand you're -- you're married?

21 A. Yes.

22 Q. What's your wife's name?

23 A. Theresa.

24 Q. Okay. I believe you have -- you have two  
25 children; is that right?

1 A. Correct.

2 Q. And what are their names?

3 A. Jeremy and Lindsey.

4 Q. Grandchildren?

5 A. Yes.

6 Q. Congratulations.

7 A. Thanks.

8 Q. Where do you -- where do you live? Where is  
9 your home?

10 A. Spring, Texas.

11 Q. Okay. After you moved to Houston, you were  
12 recruited by a headhunter and you began working for  
13 FedEx Ground. Did you actually take the job with what  
14 is now FedEx Ground?

15 A. Yes.

16 Q. Okay. How long were you in that position?

17 A. About two years.

18 Q. What did that generally involve?

19 A. I was responsible for the operations for the  
20 Gulf Coast region, including Texas, Louisiana,  
21 Mississippi -- not Mississippi, but Nevada. This is 15  
22 years ago, so I'm trying to think. Yeah, so the Gulf  
23 Coast region.

24 Q. -- okay. Two years in that position, what did  
25 you do next?



1 A. I went to work for Wells Fargo Armored Guard  
2 Services as the general manager for the Houston office  
3 here.

4 Q. Okay. How long were you in that position?

5 A. About three years.

6 Q. And what did you do after that?

7 A. I worked for a company called Personnel  
8 Decisions International, which is a human resource  
9 consulting firm.

10 Q. Okay. And how long were you in that position?

11 A. About seven years.

12 Q. So now you're in your -- about mid-40s, I  
13 think, early 40s?

14 A. Approximately.

15 Q. Okay. What did you do after that position?

16 A. I bought the landscaping companies.

17 Q. Okay. So I've handed you two documents, with a  
18 copy for your attorney. These are marked as Exhibits 1  
19 and 2 to your deposition. Exhibit 1 is the Notice Of  
20 Intention To Take the Oral and Videotaped Deposition of  
21 Gerald Thompson. And that is you, correct?

22 (Exhibit 1 marked.)

23 A. Correct.

24 Q. Exhibit 2 is the Notice Of Intention To Take  
25 the Deposition Of Landscape and Metropolitan. And you

1 are here today, both, as Gerald Thompson and as the  
2 representative of both of those entities, correct?

3 (Exhibit 2 marked.)

4 A. Yes.

5 Q. And you've seen this document, I assume?

6 A. Yes.

7 Q. And you've looked at the topics that I said we  
8 would talk about today?

9 A. Yes.

10 Q. And you're familiar with, and you can speak on  
11 those topics on behalf of Landscape and Metropolitan?

12 A. Yes.

13 Q. All right. I understand that you are the owner  
14 in some percentage of Landscape, correct?

15 A. Yes.

16 Q. And what is that percentage?

17 A. 50 percent.

18 Q. 50 percent owner of Landscape?

19 A. Yes.

20 Q. Who owns the other 50 percent?

21 A. Theresa Thompson.

22 Q. Okay. That's your wife?

23 A. Yes.

24 Q. You also own Metropolitan?

25 A. Yes.

1 Q. Also 50 percent?

2 A. Yes.

3 Q. Okay. And the other 50 percent is owned by  
4 your wife?

5 A. Yes.

6 Q. Other than Metropolitan and Landscape, do you  
7 own other businesses?

8 A. We have another company called Thompson  
9 Companies, Inc. Originally, that was set up as the  
10 payroll processing company for the two landscape  
11 companies. It still is active in some consulting  
12 capacity for landscaping-type business work.

13 Q. Okay. So Metropolitan, Landscape, Thompson  
14 Companies, Inc., any other businesses that you -- you,  
15 individually, have an ownership interest in?

16 A. Yes.

17 Q. And what are those?

18 A. It's a rental property, LLC.

19 Q. And are we talking about a residential rental  
20 or a commercial rental?

21 A. Residential.

22 Q. Okay. Is that in the Houston area?

23 A. No.

24 Q. Okay. Is it in Texas?

25 A. No.

1 Q. Where is it?

2 A. New Mexico.

3 Q. New Mexico?

4 A. Uh-huh.

5 Q. Where in New Mexico? Just curious.

6 A. Angel Fire.

7 Q. Okay. Metropolitan, Landscape, Thompson

8 Companies, Inc, and your rental LLC, any other

9 businesses that you have an ownership interest in?

10 A. Yes.

11 Q. Okay. And which business is it?

12 A. I don't know -- it's called Escaleras in Costa  
13 Rica.

14 Q. Okay. What does Escaleras do?

15 A. Well, yeah, it's a -- it's a private home that  
16 that we also rent.

17 Q. And then do you -- and so, it's an LLC  
18 structure, similar to the Angel Fire property?

19 A. Yes. Yes. Uh-huh.

20 Q. Are you the sole owner, or is it shared with  
21 your wife or someone else?

22 A. I'm the sole owner.

23 Q. Okay. Metropolitan, Landscape, Thompson

24 Companies, Inc., Angel Fire property, Costa Rica

25 property, any businesses you have an ownership interest

1 in that we're missing?

2 A. Nope, that's it.

3 Q. All right. Do you -- do you currently derive  
4 an income from any source, other than these five  
5 companies we talked about?

6 A. Yes.

7 Q. Okay. And where do you get that income from?

8 A. My financial account.

9 Q. Okay. Can you repeat what you said?

10 A. My financial account.

11 Q. I was doing -- I was re- -- full disclosure, I  
12 was researching you online before this. And it looked  
13 to me that you may have written a book at some point.  
14 Have you written books or --

15 A. I forgot about that. Yes, I have.

16 Q. Okay. Is that something you're actively  
17 pursuing? Are you trying to write to generate income,  
18 or for fun?

19 A. It's a hobby.

20 Q. Okay. Who are the owners of Thompson  
21 Companies, Inc?

22 A. Gerald Thompson and Theresa Thompson.

23 Q. Okay. Same percentage as the other two  
24 companies?

25 A. Yes.

1 Q. Tell me -- tell me when and how Landscape was  
2 started. I think you said you purchased it from  
3 someone. Can you tell me more about that?

4 A. Yes. When I was ready to leave my last  
5 employer, I decided that I would go out on my own and  
6 stake my own case. And I had a lot of experience  
7 managing people, and so I started looking to buy a  
8 business. And that, Landscape Consultants of Texas, was  
9 the business that I thought fit well with what I could  
10 afford and what I wanted to do going forward.

11 Q. Okay. What attracted you in particular and, if  
12 anything, to the landscaping business? Or is it  
13 primarily a coincidence of those -- you know, I can  
14 afford it and I'm interested in doing it?

15 A. Well, it's just like when you go out and buy a  
16 house, right? So there's so many houses on the market  
17 at the time, and you need to buy one of them. So, that  
18 one seemed to fit, out of all the ones that were  
19 available, at the time.

20 Q. What year did you purchase Landscape?

21 A. 2006.

22 Q. Okay. Did you purchase Metropolitan at the  
23 same time, or how did that come about?

24 A. They came together.

25 Q. Okay. Oh, from the same seller?

1 A. Yes.

2 Q. Tell me what Landscape Consultants does.

3 A. Well, we're a full-service landscape  
4 maintenance, landscape installation, irrigation  
5 installation and repair business. Pretty much  
6 anything -- any kind of softscape kind of landscaping.

7 Q. What does softscape landscaping mean?

8 A. We're just the general -- the other side of  
9 that would be the hardscape. We don't do the fountains.  
10 We don't make fountains. We don't do pavers, you know.  
11 We can subcontract for that, but we typically don't bid  
12 on those kinds of projects.

13 Q. So, generally, fair to say, you're sort of  
14 working with dirt and plants, and things that go with  
15 dirt and plants. And the paving and fountains and  
16 decorations, essentially, that's a -- sort of a  
17 different thing?

18 A. Right.

19 Q. Okay.

20 A. Yes.

21 Q. Is Metropolitan's business similar?

22 A. Yes.

23 Q. What, if anything, are the differences between  
24 those two businesses?

25 A. Very little.

1 Q. Okay.

2 A. They each have separate EINs. And the reason  
3 why they did that, was that when the original seller  
4 purchased Metropolitan Landscape Management, he bought  
5 it to expand his business through an acquisition. And  
6 it just made sense to keep the brand loyalty, at the  
7 time, between the two companies.

8 Q. Did you inherit any contracts that Landscape  
9 and Metropolitan had when you purchased the two  
10 companies?

11 A. Yes.

12 Q. And tell me, generally, about those contracts.

13 A. That was a long time ago.

14 Q. Yeah. To the extent you can remember.

15 A. There were multiple contracts. It was a -- it  
16 was a thriving landscaping business. So, it had  
17 multiple contracts throughout the Houston and county  
18 area, metropolitan area, probably within a 50-mile  
19 radius. City of Sugar Land, City of Rosenberg. I think  
20 they were doing the Midtown Management District at the  
21 time. Just multiple different clients. I can't  
22 remember them all. That was quite a while ago.

23 Q. Generally, I understand that the vast majority  
24 of your current business is government contracts. Is it  
25 fair to say that that was the case when you purchased



1 the companies?

2 A. Yes.

3 Q. Okay. Has -- has the percentage of your work  
4 devoted to government contracts changed significantly  
5 since you purchased the companies, or varied over the  
6 years?

7 A. I think it's probably grown.

8 Q. Okay.

9 A. Significantly, probably -- yeah, significantly  
10 grown.

11 Q. Is that a -- is that a choice you have made, to  
12 pursue government contracts?

13 A. It's the niche business that we're in. We're  
14 familiar with the bidding process. We're familiar with  
15 the low-bid contracting aspects of the -- of the  
16 entities. We are -- we have all the -- we know all the  
17 types of insurance documents we need and the, you know,  
18 confidentiality kinds of things we need to have. So  
19 it's something we -- that's just our niche, basically.

20 We don't have a sales horse. We market  
21 our business through going to the websites and putting  
22 our -- our -- ringing the hat -- or hat in the ring.  
23 And when the bids come out, then we take a look at it,  
24 and we decide if we want to do them or not. If we can  
25 do them -- if they meet our -- our criteria, then go

1 after it.

2 Q. You didn't -- it doesn't sound to me, but  
3 correct me if I'm wrong -- it doesn't sound like you had  
4 any particular experience in government contracting  
5 before you purchased the two companies. Is that fair?

6 A. Fair.

7 Q. Okay. So these -- these things you mentioned,  
8 being familiar with the bidding process, knowing the  
9 kinds of insurance the governmental entity is going to  
10 ask for, those are things you came to learn through your  
11 time as the owner of Metropolitan Landscape and working  
12 on those contracts?

13 A. Yes.

14 Q. I'm handing you, sir, what I've marked as  
15 Exhibit 3. Have you seen this document before?

16 (Exhibit 3 marked.)

17 A. Yes.

18 Q. (By Mr. Stephens) And what is this?

19 A. This is -- I'm not a lawyer, so I can't really  
20 tell you exactly what it is. But it's our -- this is a  
21 complaint for declaratory and injunctive relief.

22 Q. Not a trick question. This is your lawsuit,  
23 right?

24 A. Yes, this is the lawsuit.

25 Q. Okay. Sure.

1 A. That's -- that's by --

2 Q. Go with me, if you could, to page 5, paragraph  
3 14 at the top of the page.

4 A. Of Exhibit 3?

5 Q. Yes, sir.

6 A. Five?

7 Q. Page 5 of Exhibit 3, your Complaint.

8 A. Okay.

9 Q. And I'm looking at paragraph 14, right at the  
10 top of the page.

11 A. Okay.

12 Q. And you tell me that much of Metropolitan and  
13 Landscape's business depends on running government  
14 landscaping contracts, which account for between 80 and  
15 90 percent of their annual revenue. That's a -- that's  
16 a true statement?

17 A. Yes.

18 Q. Okay. Of that 80 to 90 percent, over the last  
19 five years, what percentage of that 80 to 90 percent has  
20 been on contracts with the City of Houston?

21 A. Let's see -- over the last five years?

22 Q. Let's start with that time frame.

23 A. Last five years, 10 percent.

24 Q. Okay. And is that on one or more contracts?

25 A. One contract.

1 Q. One contract. Is that the contract that you  
2 currently have with the City of Houston, or was there a  
3 different contract in the last five years?

4 A. A current contract.

5 Q. Okay. Other than the current contract, have  
6 you had any other contracts with the City of Houston in  
7 the last five years?

8 A. Not that I remember.

9 Q. Before the last five years -- more than five  
10 years ago -- did you have any other contracts with the  
11 City of Houston?

12 A. Possibly, but I don't remember.

13 Q. Okay.

14 A. I mean, we have multiple contracts. It wasn't  
15 very large, probably, but I'm sure we -- (inaudible.)

16 THE REPORTER: I'm sure, what?

17 A. I'm sure we would have done something. You  
18 know, it wouldn't have been very large, but it's very  
19 possible we could have had some contracted work with  
20 them.

21 Q. So is it -- I guess, would it be fair to say,  
22 that in the time you've owned Landscape specifically,  
23 you have had -- you have your current, approximately,  
24 \$1.3 million contract.

25 A. Yes.

1 Q. And there may be other smaller contracts, more  
2 than five years ago, that you don't remember.

3 A. I don't remember the exact amount or the  
4 contract specifically, no.

5 Q. Do -- do you remember if there were contracts  
6 at all?

7 A. For the City?

8 Q. For the City of Houston.

9 A. Before the -- in the past -- before the five  
10 years?

11 Q. Over the entire period of time you've owned  
12 Landscape.

13 A. Well, the one we have.

14 Q. Okay. Other than the one you've had, you can't  
15 recall a separate contract other than the current one?

16 A. I can't not recall it either.

17 Q. Sure. Is Landscape a successful business?

18 A. Yes.

19 Q. And how do you -- how do you define that? You  
20 answered, yes. What makes it a successful business to  
21 you?

22 A. Well, over the last 18 years, we have been able  
23 to meet our payroll. With all of our 40-some employees  
24 every week, never missed a payroll. We grow our  
25 revenues each year the best we can. And, you know, we

1 earn a pretty good living.

2 Q. What's Landscape's average yearly revenue over  
3 the last couple of years?

4 A. Probably around 3.2 million. We're talking  
5 combined.

6 Q. Sure. You're -- and, well, let me clarify  
7 that. When you say "combined," you mean you're  
8 combining Landscape and Metropolitan's revenues?

9 A. Yes.

10 Q. Can you give me an estimate of what Landscape's  
11 would have been on its own, or are there operations to  
12 intertwine for you to be able to do that?

13 A. Well, they have separate EINs, so probably  
14 60 percent would be Landscape Consultants and 40 percent  
15 would be Metropolitan. That's just an estimate.

16 Q. Sure. 3.2 million, roughly, combined. About  
17 60 percent of that attributable to Landscape and about  
18 40 percent of that attributable to Metropolitan, and  
19 that's revenue. What does the profit number look like  
20 after you take out your expenses, liabilities, et  
21 cetera?

22 THE WITNESS: Do I go ahead and answer  
23 that?

24 MS. WILCOX: Can you repeat the question?

25 Q. (By Mr. Stephens) We talked about the revenue

1 number.

2 A. Right.

3 Q. I'm trying to determine what the -- what your  
4 estimate of the profit number for Landscape.

5 A. I think it's standard, somewhere around  
6 25 percent.

7 Q. Okay.

8 A. That would just be my guess. I mean, it's kind  
9 of a guess.

10 Q. And how about for Metropolitan?

11 A. About the same.

12 Q. When -- when you purchased Landscape 18 years  
13 ago, how many employees did it have?

14 A. Thirty.

15 Q. And how many employees does it have now?

16 A. Forty-five.

17 Q. Has it ever had more than 45 employees?

18 A. Yes.

19 Q. And when was that?

20 A. Boy, that would have been ten years ago --  
21 eight years ago.

22 Q. Okay. And what were the circumstances of the  
23 business that led to you having more than 45 employees  
24 about ten years ago?

25 A. We landed a very large tree planting project

1 for this, Harris County.

2 Q. Very large, do you recall an approximate dollar  
3 amount for that contract?

4 A. It was about a million dollars annually.

5 Q. When that contract ended, I assume you didn't  
6 need all the employees you needed for that contract, and  
7 so you scaled back a little bit. Is that fair?

8 A. Yeah, through attrition, and things like that,  
9 sure.

10 Q. Okay. You're currently, approximately, 45  
11 employees. Are they -- are they W-2s? I mean, they're  
12 on your payroll. They get a --

13 A. Yes.

14 Q. Okay. Do you utilize independent contractors?

15 A. Occasionally.

16 Q. Okay. In what context?

17 A. Oh, no, not independent contractors. I thought  
18 you meant subcontractors.

19 Q. Okay. Fair point. So I'm asking, not  
20 subcontractors. Would you ever have a 1099, who you  
21 bring in to do a specific project, as opposed to hiring  
22 someone as a full-time employee?

23 A. No.

24 Q. So the people on your payroll are full-time  
25 employees?



1 A. They're all -- it's our workforce, yes.

2 Q. Okay. Are -- are your employees shared between  
3 Landscape and Metropolitan?

4 A. Yeah, basically. Yeah, I mean, it's all pretty  
5 much one. Like I said, the only difference was a  
6 branding position back in 2006 when we purchased the  
7 company.

8 Q. Okay. What led you to maintain the separation  
9 between the two companies? If the difference was  
10 primarily with branding, why didn't you combine them?

11 A. I thought about doing that many times. It's --  
12 it's a -- kind of an administrative nightmare. In a lot  
13 of sense, closing one, and consolidation like that,  
14 would be tricky.

15 At one time, Metropolitan Landscape was  
16 HUB certified through Texas, and we'd grown the business  
17 too large to -- to requalify for that, so that was part  
18 of the reason. But since then, it's just kind of been  
19 the way it's been.

20 Q. Okay. Can you describe for me the structure of  
21 Landscape's business? I mean, how does it -- do you  
22 have landscaping crews? Supervisors who are under sort  
23 of a general manager? What's that structure look like?

24 A. Sure. As far as the operational side of it, we  
25 have a general manager. And then we have an operations

1 manager. And then we have anywhere from 12 to 14  
2 supervisors, crew supervisors. And then we have the  
3 remaining, you know, 30 -- 30 employees, or so, that  
4 work underneath the supervisors.

5 Q. And who is your -- you have one general  
6 manager?

7 A. Yes.

8 Q. Who is that?

9 A. Jeremy Thompson.

10 Q. That's your -- I think you said that was your  
11 son?

12 A. Yes.

13 Q. Is -- is that a position for both Landscape and  
14 Metropolitan?

15 A. Yes.

16 Q. And it's the same for both of them?

17 A. Yes.

18 Q. I think you said you have one ops manager?

19 A. Yes.

20 Q. Who is that?

21 A. His name is Edwin Castillo.

22 Q. What does an OPS manager do?

23 A. Oversees the supervisors of the crews directly.

24 Q. And how long has Mr. Castillo been with the  
25 business?

1 A. With the business, or with us?

2 Q. Well, I guess if there are different answers to  
3 both of those questions, I guess, how long has he been  
4 with you and how long has he been with the business?

5 A. He's been with me since I purchased the  
6 business in 2006. And I think he was with the previous  
7 owner since 1984.

8 Q. Got it. He was with the companies when you  
9 bought them, and he's stayed with you since?

10 A. Yes.

11 Q. Okay. What kind of turnover do you have in the  
12 supervisor department? You said you have about 12 to 14  
13 supervisors. Are those long-term employees or do they  
14 cycle in and out?

15 A. Very little. Probably less -- not even one  
16 percent.

17 Q. So what would be the average tenure of your  
18 average crew supervisor?

19 A. As long as I've owned the company, pretty much.  
20 I mean, there's been a few, but typically not.

21 Q. And what about -- what about at the -- I guess  
22 what I'm viewing is sort of the fourth rung of the  
23 ladder, which is the landscaping crews, the personnel  
24 that make up that group. What does that turnover look  
25 like? How long do they stay with the company?

1 A. That varies, depending on the seasonality. But  
2 it's still very low, you know. From, you know, maybe  
3 one or two a year, we have to, you know, find someone  
4 else or add new people.

5 Q. You said seasonality. What's your -- what's  
6 your peak season?

7 A. Summer.

8 Q. Okay. If you get a particularly large  
9 contract, do you generally need to hire for that or does  
10 that fit into your existing employee pool?

11 A. It means -- it just really depends on how big  
12 that is. Like, for example, when you said about the  
13 tree project. You know, we had to scale up, you know,  
14 another 25 people just to take care of that contract.  
15 Likewise, if we lost that contract, we scale down. But,  
16 typically, we can absorb it through just the nature of  
17 the government business that we work with.

18 And that -- and I mean that, because every  
19 five years they have to go out for bid. So, you might  
20 have been successful the first five -- when you bid it  
21 five years ago, but then you might not get it the second  
22 five years though. But those are constant. Those roll  
23 around, you know, throughout the city all the time, and  
24 the county.

25 Q. And that enables you to have some sort of

1 predicability in your planning because you know -- you  
2 know when a contract is going to be coming up and you  
3 can gauge the personnel you will need?

4 A. I think it's more the market size.

5 Q. Do -- do Landscape and Metropolitan own the  
6 equipment they use or do they lease that from your other  
7 company, Thompson?

8 A. No. It's owned by each company.

9 Q. Do you have a group of suppliers that you  
10 typically use? Do you have a -- let me ask that a  
11 different way.

12 Do you have to use suppliers for  
13 landscaping contracts, typically?

14 A. Yes.

15 Q. What kind of business are those suppliers?

16 A. Most of the suppliers would be supplying us  
17 with plant material, trees for -- for landscape  
18 installation projects, irrigation parts, to be able to  
19 build the irrigation systems to specs that are out  
20 there, and then repair parts, and things like that.

21 Q. Okay. Who are some of your suppliers?

22 A. Ewing Irrigation, Southwest Mower, Bobcat,  
23 Texas Color Plants. We -- then we use a place out in  
24 Louisiana, but I can't remember the name of it right  
25 now, for some plant material. Then, of course,

1 materials from, like, Home Depot, and things like that.

2 Q. Some of those companies you mentioned, Ewing  
3 Southwest Mower, Bobcat, Texas Color Plants, are those  
4 Houston-based suppliers?

5 A. Yes.

6 Q. Do you have a group of subcontractors that you  
7 tend to go back to for your government contracts?

8 A. Not specifically for government contracts, but  
9 for other contracts.

10 Q. Okay. So explain. What do you mean?

11 A. Well, for example, we use subcontractors that  
12 will remove trees. We typically tend to stay away from  
13 that because of the risk factor. But there are specific  
14 subcontractors that, you know, do tree trimming and tree  
15 removal. And sure, you know, a location for the City of  
16 Houston could call and say, "Hey, I have a tree down.  
17 Could you get it out?" And we would use that  
18 subcontractor to do that.

19 Likewise, we would use subcontractors for,  
20 like, acreage mowing contracts. We're just not in that  
21 game. So -- but some of our contracts say you have this  
22 60-acre property you have to have mowed if you want to  
23 get this contract. So, we would subcontract with  
24 somebody who does that type of work and has that type of  
25 equipment.

1 Q. So a contract requiring something that you  
2 don't -- is not typically within your wheelhouse,  
3 finding you to use a subcontractor. Fair?

4 A. Yes.

5 Q. Well, what are the other -- what are the other  
6 drivers behind you using a subcontractor on a particular  
7 project?

8 A. Efficiency.

9 Q. And what do you mean by that?

10 A. Well, like I said, we're not -- it's not our --  
11 our -- we don't have the skill set necessarily. We do  
12 -- we can do some of it. But there's a lot of moving  
13 parts in a landscaping business of this size, and so,  
14 you know, it provides an extra set of eyes and -- or  
15 hands to do the work when needed.

16 Q. Okay.

17 A. But those things are very on call-ish kind of  
18 things. Like, you can't bank on getting 10 trees this  
19 week or 20 trees this week.

20 Q. Fair to say, that Landscape's business has  
21 grown since you purchased the company?

22 A. Yes.

23 Q. Can you describe what steps you've taken to  
24 grow the business?

25 A. Yes.

1 Q. And what are they?

2 A. When I first bought the business, I felt there  
3 was a lot more potential. And so, I spent my first six  
4 months, besides getting ready to run the business, to  
5 get on all the government lists for procurement. You  
6 know, you name the city, and I'm on that bid list.

7 Had a salesperson for a while, but it  
8 didn't seem to work out. It didn't work out the way I  
9 wanted it to. So, now we get bids in all the time from  
10 various points. The ones that fit our needs, we'll go  
11 after -- that we think will work for our company or  
12 companies.

13 Q. What -- what cities do you work for, other than  
14 the City of Houston, currently?

15 A. City of Alvin; City of Lake Jackson; City of  
16 Rosenberg; City of Sugar Land; City of Dearborn. I'm  
17 sure I'm missing a couple of them.

18 Q. What's the average dollar amount --

19 A. Oh, City of West U.

20 Q. City of West U. What's the average dollar  
21 amount of these contracts?

22 A. They vary. Anywhere from a hundred thousand to  
23 250,000 annually.

24 Q. What's a -- what's a big contract to you?

25 A. Million dollar a year.



1 Q. Okay. How frequently do you have a big  
2 contract?

3 A. Do I have a big contract? How often do I have  
4 a big contract?

5 Q. How often do you have a big contract?

6 A. Big contract in the -- in the scheme of, like,  
7 one million?

8 Q. Yes.

9 A. We've had one.

10 Q. Okay. And that is the Harris County contract?

11 A. Yes.

12 Q. And now the Houston contract?

13 A. Well, that's over five years.

14 Q. Right.

15 A. The other one was annual.

16 Q. Right. So that's 1.3 over five?

17 A. Yes.

18 Q. Okay. I seem to recall having read somewhere  
19 that Landscape was owned 51 percent by you and  
20 Metropolitan was owned 51 percent by your wife. Is that  
21 accurate, or has that ever been accurate?

22 A. You know, I'm not really -- and I know that  
23 it's possible that Theresa was listed as 51 percent of  
24 Metropolitan because of the connection with the HUB  
25 program. But, other than that, we would be 50/50, just

1 like when you're married.

2 Q. I think lots of people would just be happy to  
3 get a 50/50 split in marriage.

4 A. I guess, probably, that's true.

5 Q. I wanted to show you another exhibit. I'm  
6 handing you what's been marked as Exhibit 4. This is a  
7 declaration that you signed. I think you'll see your  
8 signature on the final page. Are you familiar with this  
9 document.

10 (Exhibit 4 marked.)

11 A. Yes.

12 Q. (By Mr. Stephens) Okay. Turn to page 2, if you  
13 could?

14 A. Okay.

15 Q. Paragraph 5.

16 A. Yes.

17 Q. "Neither Landscape consultants nor Metropolitan  
18 qualify as a minority or Woman-owned Business Enterprise  
19 under the City of Houston's Minority, Women, and Small  
20 Business Enterprise (MWSBE) Program."

21 What does it mean to you that neither  
22 Landscape nor Metropolitan could qualify as a Minority  
23 or Women-owned Business Enterprise?

24 A. Well, when I researched the criteria to become  
25 certified for the City of Houston, they have specific

1 revenue amounts. They wanted to have financials that I  
2 was not willing to give. There were a few other things,  
3 but they were things that we decided we would -- we  
4 would just go -- we wouldn't -- we wouldn't get  
5 qualified -- I guess that would be the better way to say  
6 it -- even though my wife is -- is half owner.

7 Q. Okay.

8 A. And that's one of the criteria.

9 But the other side of it is also that  
10 she's -- she's the owner, but I think the City of  
11 Houston required her to be, like, super active in the  
12 operations of the business. And she does -- she does  
13 work for the business, but not what would probably  
14 qualify under that criteria.

15 Q. What's the thought process behind having her  
16 own any portion of the business?

17 A. I'm sorry?

18 Q. What's the thought process behind having your  
19 wife own any portion of either business?

20 A. She's my partner.

21 Q. Okay. Were you all married when you bought the  
22 businesses?

23 A. Yes.

24 Q. So that was the set-up from day one?

25 A. Yes.

1 Q. Okay. So "qualified" to me it sounds like you  
2 said you looked at what it would take to get certified.  
3 Is that fair?

4 A. Yes.

5 Q. And you determined you would probably not be  
6 able to get certified?

7 A. Right. Wasn't worth the time and effort.

8 Q. For either business, did you ever actually  
9 apply for certification?

10 A. We've inquired.

11 Q. What's the distinction you were drawing between  
12 applied and inquired?

13 A. We made some phone calls to find out what it  
14 would take, and inquired about that, and chose not to go  
15 forward.

16 Q. Okay. And when -- when, approximately, was  
17 this?

18 A. Oh, probably, six -- five, six years ago.

19 Q. At the time, why were you -- why were you  
20 inquiring about the certification?

21 A. So that we would have the ability to -- to  
22 qualify for the Minority Programs that come out from  
23 different city government contracts.

24 Q. Okay. Metropolitan -- excuse me. Metropolitan  
25 has never had a contract with the City of Houston

1 correct?

2 A. Correct.

3 Q. Okay. Landscape has a current contract with  
4 the City of Houston?

5 A. Correct.

6 Q. And you can't recall if there may have been  
7 others in the past?

8 (Reporter clarification.)

9 A. That's correct.

10 Q. Has Metropolitan ever bid on a contract with  
11 the City of Houston?

12 A. No.

13 Q. And why not?

14 A. Landscape Consultants did.

15 Q. Okay. And what's -- what's the -- what's the  
16 thought process behind having one bid versus the other?

17 A. I think it's more of a matter of just kind of  
18 balancing the revenues of the two companies at one  
19 time -- just balancing the business. It really didn't  
20 matter, it's just how we did it. It's -- we decide each  
21 time, do we want to bid it under Metropolitan. There's  
22 no real specific reasoning that -- that's concrete, that  
23 that's why we did it that way.

24 Q. So there's nothing -- there's nothing unique to  
25 Landscape's business that leads you to say, "Okay, this

1 is the one we use to bid on Houston contracts as opposed  
2 to Sugar Land contracts"?

3 A. Correct.

4 Q. Okay. And nothing unique about Metropolitan's  
5 business that leads you to say, "Well, with  
6 Metropolitan, we're only bidding on Management District  
7 work or on West U work"?

8 A. No, not really.

9 Q. Okay. Functionally, they do the same thing.  
10 They could bid on the same contracts. You just make a  
11 -- kind of a game time election as to which -- which  
12 company you're going to use to bid on which contract?

13 A. No, not necessarily. You know, I mean, if we  
14 had a reputation -- if we had a contract under  
15 Metropolitan -- you're starting to spur my memory now.

16 But if we had a contract under  
17 Metropolitan that was very successful and we lost it  
18 because of low bid, if it comes out for bid again, they  
19 know us. They know our quality of service. That we  
20 would probably bid that again under Metropolitan.

21 Q. So they know the Metropolitan name. You've had  
22 a contract with -- I'm just using this as a  
23 hypothetical. But you've had a Metropolitan contract  
24 with Sugar Land before. If you wanted another Sugar  
25 Land contract, you would bid with Metropolitan again.

1 A. Right. But in that case, it's Landscape.

2 Q. Got it. Got it. Your current contract with  
3 the City of Houston, what is it for?

4 A. We provide services for multiple locations  
5 around the city. Different buildings, police -- police  
6 buildings, just general services contract for all the  
7 different locations that they have.

8 Q. Okay. So it's a goods and services contract?

9 A. I don't know. Is that what they call it? I  
10 don't know what they actually call it. It's a general  
11 services contract --

12 Q. You see yourself --

13 A. -- for those facilities.

14 Q. Sure. You see yourself as providing services  
15 to the City of Houston?

16 A. Yes.

17 Q. Okay. Would you characterize it as a  
18 construction contract?

19 A. Landscaping contract.

20 Q. Okay.

21 A. I mean that's -- that's the name of the  
22 contract, I think, is landscaping services. I don't  
23 know the exact name of it. I would have to go look.  
24 But -- so that's -- that's typically what we bid on, are  
25 landscaping-type contracts.

1 Q. Okay. Would -- would you characterize it as a  
2 professional services contract?

3 A. Not really.

4 Q. Is that a -- is that a term, professional  
5 services, that has any significance to you, one way or  
6 another?

7 A. I look at that as being more of a white collar  
8 kind of a service.

9 Q. Okay.

10 A. Like a staffing company. Somebody that has --  
11 not -- not goes out and gets their arms and legs dirty  
12 in the street.

13 Q. Real work. So that's -- that's not what  
14 Landscaping (sic) does, professional services?

15 A. No.

16 Q. That's not what Metropolitan does?

17 A. No.

18 Q. Does Landscape do construction?

19 A. Very small amount.

20 Q. Tell me about what construction Landscaping  
21 does.

22 A. We've done some work where we will install  
23 backflow securities -- fencing around backflow that's on  
24 a property, to keep it from being stolen.

25 Q. Okay.



1 A. So it requires some -- a little bit of  
2 construction work.

3 Q. Is that related to the irrigation installation  
4 work, or is that --

5 A. Yes.

6 Q. Okay. Metropolitan? Same answer or a  
7 different answer as to whether it's -- does construction  
8 work?

9 A. Same -- same thing --

10 Q. Okay. Why did Landscape elect to pursue its  
11 current contract with the City of Houston?

12 A. Well, it seems to me that the walls are closing  
13 in on my company, okay? You know, I've been in business  
14 for 20 -- 18 years with this business, and those  
15 minority programs, were basic- -- essentially not  
16 around. And they've become more entrenched in the city  
17 governments and county governments over the last couple  
18 of years -- last few years. So, it's really for the  
19 future survival of my businesses and -- and to be able  
20 to continue to employ my employees.

21 Q. I am interested in that answer. What I -- what  
22 I asked was why you chose to pursue this contract with  
23 the City of Houston. And what you told me --

24 A. Why I -- why I -- why I chose to pursue the  
25 contract?

1 Q. Yes.

2 A. Or I thought you said the lawsuit.

3 Q. I'm sorry, maybe I wasn't clear. You were  
4 answering a question about why you chose to pursue this  
5 lawsuit.

6 A. Correct.

7 Q. Okay.

8 A. I'm sorry.

9 Q. That's fine. Why did you -- why did you choose  
10 to pursue the contract with the City, whenever that was,  
11 a few years ago?

12 A. It was very attractive. It had a -- it had --  
13 it has a lot of the elements of the things that we look  
14 for, in order to spread out our business with our  
15 employees and so forth. Where the locations are,  
16 proximity to our dispatch operations. I mean, that's --  
17 you know, we look at those things and say that would be  
18 a good contract. So --

19 Q. The contract had an MBE participation goal --

20 A. Yes.

21 Q. -- of 11 percent.

22 A. Yes.

23 Q. What did you tell the City about how you would  
24 meet that goal?

25 A. Well, we -- we -- we complied with the

1 paperwork that was required upfront with our bid. We  
2 found a subcontractor that was certified by the City.  
3 We signed the documents together that we would do that.  
4 We submitted our bid with that information, and we were  
5 awarded the contract.

6 Q. Do you know how that goal of 11 percent was  
7 determined?

8 A. No idea.

9 Q. Okay. How does that goal -- well, I think you  
10 said then, you can't recall any other City of Houston  
11 contracts. So, I assume you would also not be able to  
12 recall any MBE goals on any other City of Houston  
13 contracts?

14 A. No.

15 Q. Okay. On the other cities you work for, are  
16 there similar goals?

17 A. Some have some.

18 Q. Okay. For those that have a goal, have you bid  
19 on and been successful in winning those contracts?

20 A. I should probably back up on that. When you  
21 say "the City contracts," I'm just trying to think if  
22 there's any that we currently have that require that. I  
23 want to say that they do not.

24 Q. Okay.

25 A. But there are other entities that we -- that

1 have goals like that, like, for example, Midtown, the  
2 TIRZ Districts. And now Harris County has some very  
3 specific requirements like that, that they just started  
4 doing over the last two years.

5 Q. Let's talk about the TIRZ Districts. Do you  
6 have TIRZ contracts currently?

7 A. Not -- I don't think so. We do some work for  
8 Midtown, yeah, but I'm not sure if it's part of the --  
9 of the actual TIRZ of the Management District. We do  
10 the parks downtown.

11 Q. Okay. Can you recall, other than Midtown, a  
12 specific TIRZ that you had a contract with in the past?

13 A. Sure. Houston Downtown Management District.  
14 There was also St. George TIRZ and also Upper Kirby  
15 District. We had those at one time.

16 Q. Did those TIRZ contracts include MBE  
17 participation goals?

18 A. I think that -- I want to think that -- I think  
19 the Houston Downtown Management District did, but I  
20 can't remember, that was years ago. And also with Upper  
21 Kirby was years ago.

22 Q. Okay. Those were contracts you -- you got --

23 A. Yes.

24 Q. -- and performed?

25 A. Yes.

1 Q. Today, other than your City of Houston  
2 contract, can you think of any other contracts with any  
3 other governmental entity, other than Mr. Sileo's  
4 client, that included an MBE participation goal?

5 A. Yeah, Harris County.

6 Q. Okay. Tell me about your Harris County  
7 contract.

8 A. We have multiple contracts with Harris County,  
9 which one? I mean --

10 Q. Well, what are you doing for Harris County  
11 generally?

12 A. Okay. We have a contract with the Harris  
13 County Toll Road Authority. We have a contract with  
14 Harris County Department of Education, Harris County  
15 Health Department, Harris County Downtown Buildings.  
16 Those are the ones I think -- there might be one or two  
17 more, but that's kind of currently what we do. We --

18 (Cross-talk.)

19 Q. These are all separate contracts with --

20 A. Yes.

21 Q. -- different departments of the county?

22 A. Yes.

23 Q. Okay. Do each of these contracts include an  
24 MBE goal?

25 A. Starting to.

1 Q. Okay.

2 A. The last -- yeah, they are starting to -- for  
3 the last contract we bid on for the Downtown Districts  
4 is now including that -- the Harris County Toll Road is  
5 doing that. And there are a couple of other ones that  
6 require a 10 or 11 percent minority contract. They  
7 never used to.

8 Q. And these are contracts you -- you bid on and  
9 won --

10 A. Yes.

11 Q. -- that included these goals?

12 A. Yes.

13 Q. Other than the County, other than the City, and  
14 other than Midtown Management District, can you think of  
15 any current contracts with governmental entities you  
16 have that included an MBE participation goal?

17 A. Not right off the top.

18 Q. Okay. What's the collective, if you could  
19 estimate, dollar value of these Harris County contracts  
20 that you currently have?

21 A. Oh, boy. Maybe, four to 500,000 a year.  
22 That's probably a little high. Maybe, three to 400,000.

23 Q. Are you utilizing MBE subcontractors on each of  
24 these contracts?

25 A. Yes, trying to.

1 Q. Okay. And when you say, "trying to," what do  
2 you -- what do you mean?

3 A. Well, I think if this program were to maintain  
4 and continue, that the City has to really understand the  
5 types of subcontractors that are being certified. Our  
6 experience has been, they're very nonresponsive.  
7 They're not really that interested, but yet it's our  
8 responsibility to chase them down and get them to do the  
9 work, if at all. They call that a good faith effort.  
10 It takes a lot of time to try to set this up.

11 Typically, when we get a bid, we have  
12 about seven days to put the bid together. And it's the  
13 primary contractor's responsibility to find one. They  
14 have no -- they have no incentive to find us. And yet,  
15 we have to choose one that we don't have any idea what  
16 quality they're gonna provide; what kind of employees  
17 they have; if they operate legally -- we have no idea.

18 But we have seven days to figure that out,  
19 and they're not even required to give us pricing. We  
20 have to kind of go in blindly saying, "Here's a piece of  
21 paper, sign it. You get 11 percent. We'll figure out  
22 later what you'll be able to do," because we have no  
23 idea what geographical coverage they go -- how far they  
24 go -- how many employees they have. They're not  
25 required to do any of that. So, that's -- that's the

1 gist of the problem.

2 Q. Which MBE contractors do you subcontract with  
3 on the Harris County contracts, if you recall?

4 A. I don't recall their name. We've -- we've  
5 reached out to many and get very low response. I mean,  
6 once you sign up with one of them, that's your guy.  
7 That's the company you're supposed to use. And if you  
8 don't, you get noncompliance letters and stuff like  
9 that.

10 Q. Do you, today, have any MBE subcontractor that  
11 you could confidently say you could use on a government  
12 contract?

13 A. Do I currently, that's not certified with the  
14 City, you mean?

15 Q. That is certified with the City.

16 A. No.

17 Q. How about the County?

18 A. No. I mean, we -- we -- we have people that  
19 are set up to do that work, but we haven't been able to  
20 get them to do the work.

21 Q. So, I just want to make sure I understand.

22 A. I mean, you said, "Do I have a relationship?"  
23 I don't have a relationship. You know, they signed the  
24 contract just like we did. Like, we're gonna provide  
25 the service. Oh, yeah, you give us 10 or 11 percent.



1 Yes, they sign the paper. They are committed to it. We  
2 commit to it. We submit the bid. And then when we  
3 start thinking, hey, you know, we need you to do this  
4 work; we don't hear from them. They won't respond. And  
5 so, then we have to finish the work. We can't wait  
6 around, because grass grows every week. So, you know,  
7 they have to start complying and they don't. So --

8 Q. So you've -- you've been able to identify, at  
9 least on paper, MBE certified, MBE eligible,  
10 subcontracting firms. You put them -- you talk to them.  
11 You put them on your bid. You get the bid. And then  
12 what I'm hearing is, that every instance you have been  
13 unable to contact that subcontractor to have them  
14 actually do the work they said they would do; is that  
15 correct?

16 A. In all but one case.

17 Q. Okay. So, what's the denominator here? How  
18 many subcontractors are we talking about?

19 A. Well, the City has a list. Maybe a half a  
20 dozen to a dozen that they've certified to do  
21 landscaping type of work, I guess. I -- I really don't  
22 know.

23 Q. Have you spoken to each of these? Have you  
24 attempted to contact each of these companies to put them  
25 on your bids?

1 A. No.

2 Q. How -- how do you go about determining which  
3 subcontractor you would use? I mean, let's use a  
4 concrete example. Let's use your current contract with  
5 the City of Houston.

6 A. Uh-huh.

7 Q. I think you put a company called X Scapes (sic)  
8 Environmental on your bid.

9 A. Right. Correct.

10 Q. How did you find X Scapes?

11 A. Through the -- through the list.

12 Q. Okay. So, walk me through the process of, you  
13 looked at the list and then you were awarded a contract.  
14 What happens in between finding them on the list and  
15 awarding the contract with X Scapes?

16 A. That would be a better question for -- for the  
17 general manager. But my understanding of it is that we  
18 have -- we get it -- we get the bid -- we see the bid.  
19 It asks for a certain goal. It says you have to have a  
20 certified city contractor, subcontractor, minority  
21 contractor.

22 We go out and we get the list that they  
23 have available at that time, that's certified by the  
24 City. And we -- again, we only have, like, five to  
25 seven days to accomplish this, and reach out to the

1 first one that responds, because they're all the same to  
2 me. I don't know any of them, all right.

3 And so this person, X Scape, decided to  
4 sign on the contract, or -- or sign the commitment with  
5 us. So we submit that to the City. And then we get the  
6 contract, and we start performing the services.  
7 Everything is being accomplished and completed as  
8 needed. No -- no service complaints.

9 We send an email to X Scape and say, "Hey,  
10 can you do these five locations for us this week? Give  
11 me a price." Okay. Nothing. Okay. So then we go  
12 about our business. Couple of months later -- oh, we  
13 get a -- we get a notice from the City, "Hey, you're not  
14 in compliance." So we send another email, "Hey, will  
15 you give us a price for those five locations?" Nothing.

16 A couple of weeks go by, "You're out of  
17 compliance. You've got to meet this goal." So we --  
18 and this is the only one we can use. I mean, we can't  
19 say, "Hey, we've got other -- " and we have done that.  
20 We have other minority subcontractors that we use.  
21 They're just not certified by the City. So we try to  
22 submit those. "Can we use them?" "No, you have to use  
23 X Scape."

24 So this just goes on and on, and after a  
25 while it gets pretty tiring. And you just -- how many

1 times -- how many times do you have to make a good faith  
2 effort? Is it one? Is it ten? I mean, is it a  
3 hundred? I mean, we have a business to run. We don't  
4 have time to play games. We have to get this done.  
5 We're under contract.

6 Q. So at some point, do you just go ahead and do  
7 the work?

8 A. We have to. It's our contract.

9 Q. Do you get paid for doing that work?

10 A. Yes.

11 Q. Okay.

12 MS. WILCOX: So we've been going about, I  
13 think, a little over an hour. Would you guys like to  
14 take a break?

15 MR. STEPHENS: I was about to say, we've  
16 been going an hour. We can take a ten-minute break if  
17 you want a break.

18 THE WITNESS: Sure, that's fine.

19 THE VIDEOGRAPHER: 11:30, we're off the  
20 record.

21 (Break taken.)

22 THE VIDEOGRAPHER: This is the beginning  
23 of File Number 2 to the deposition of Gerald Thompson.  
24 The time is 11:45. We're on the record.

25 Q. (By Mr. Stephens) Welcome back, sir. Are you

1 ready to go ahead?

2 A. Yes.

3 Q. We talked before the break about the term you  
4 used, "good faith efforts." What does that mean to you?

5 A. Well, to me it just means that you have to  
6 reach out -- I think originally, it was designed to --  
7 to make a good faith effort to find one, okay.

8 Q. Find a --

9 A. A sub- -- minority subcontractor. And if you  
10 couldn't find one, you had to document, you know, what  
11 you did to try to find one -- find a minority business.  
12 That was the first understanding of it.

13 And then, didn't really think of it at the  
14 time that -- once we found a minority subcontractor,  
15 that we'd have to make a good faith effort to get them  
16 to do what they were supposed to do. I mean -- I mean,  
17 they have -- there's no responsibility on their end.

18 Q. Okay. You are -- you, meaning Landscape and  
19 Metropolitan, are not MBEs, SBES, WBES, correct?

20 A. Correct.

21 Q. So when a contract includes a participation  
22 goal, what are your options?

23 A. Make a good faith effort or find one -- find a  
24 minority contractor.

25 Q. Okay. Is that a requirement that, to your

1 understanding, applies to all primes?

2 A. All primes in the landscaping industry, or are  
3 you talking all primes in general?

4 Q. I'm talking all primes in general on The City  
5 of Houston contracts.

6 A. I don't know for sure, but it seems like they  
7 only targeted specific types of industries to have this  
8 program.

9 Q. Okay. What kind of industries?

10 A. Construction, landscaping, things of that  
11 nature. But I could be wrong. I mean, I don't know  
12 with all the procurement that -- the procurement systems  
13 that they have, requirements they have for, like, goods  
14 and services, other goods and services, or professional  
15 services, as you say.

16 Q. Okay. So let's -- let's stick then to your  
17 little -- your niche --

18 A. Sure.

19 Q. -- the landscaping government contracts, and  
20 specifically with the City of Houston.

21 Is it your understanding that any prime  
22 contractor who bids on a contract that includes an MBE  
23 participation goal, has to go out and get a minority  
24 subcontractor to meet that goal?

25 A. Yes.

1 Q. Okay.

2 A. Let me back up on that. Not necessarily  
3 though.

4 Q. Okay. So in which situations would they not?

5 A. Let's say that I'm already a certified minority  
6 subcontractor and I qualify as the subcontractor, so I  
7 don't have to give 10 percent to someone else.

8 Q. Okay. So your understanding of the --

9 A. Or 11 percent.

10 Q. -- and we're talking about the City of Houston  
11 program.

12 A. Yes.

13 Q. So your understanding of that program is that,  
14 if you're a minority prime --

15 A. Correct.

16 Q. -- that's your minority participation. You  
17 don't have to go out and find a subcontractor at all.

18 A. That's my understanding.

19 Q. Okay. And where -- where did you come by that  
20 understanding?

21 A. That's a good ques- -- I'm not a hundred  
22 percent sure where I got it, but it -- it makes common  
23 sense. I think it's more of a common sense thinking  
24 that they wouldn't have to, why would they.

25 Q. Okay. Back to your declaration briefly, which

1 I think was Exhibit 4. And I am looking at Paragraph 7  
2 on the bottom of page 2, and I'll read it, "Landscape  
3 Consultants and Metropolitan intend to bid for public  
4 contracts with the City of Houston in the future and  
5 would like to do so free from the disadvantage created  
6 by the MWSBE Program's racial preferences." Did I read  
7 that correctly?

8 A. Yes.

9 Q. What disadvantage is created by the program?

10 A. Well, there's several. Primarily -- primarily,  
11 the program is discriminating against my companies  
12 because I'm a white owner, even though 95 percent of my  
13 employees are Hispanic. I don't know how much worse it  
14 can get than to have your 14th Amendment right be  
15 violated from equal protection under the law.

16 11 percent of a contract might not seem  
17 like a lot to people that put these programs together,  
18 but that's a lot of money when you have, you know, 40 to  
19 50 people working for you, that you're responsible to  
20 make payroll for them every -- every week -- every two  
21 weeks.

22 There's also some very inherent risk  
23 that's hard to quantify. When we sign a contract, we  
24 take that contract very seriously and we follow the  
25 terms and conditions in order to comply with that



1 contract. From my understanding with these minority  
2 businesses that are certified by the City, there is more  
3 concern from the City, just to make sure that it's owned  
4 by a minority as the main factor, in that, the minority  
5 is working in the operation as a major contributor to  
6 the operation, so -- and also has put some financial  
7 interest in it. That seems to be the main concern. And  
8 if you qualify for that, you become certified. There's  
9 no regard for whether or not the subcontractors, that  
10 I'm aware of, are complying with the insurance  
11 requirements that we're required to have with the  
12 contract, or that we would require from our own  
13 subcontractors.

14 For example, the City of Houston requires  
15 a certain level of liability, general liability. They  
16 require a certain amount of auto liability. They  
17 require a certain amount of, like, workman's comp  
18 programs. So whose job is it to monitor that? Those  
19 subcontractors, minority subcontractors, are not  
20 required to submit those documents to us. That's a huge  
21 problem.

22 The other risk factor is, who are these  
23 people? Who are their employees? Do they background  
24 check these employees? Are these employees Legal Work  
25 Force? Do they do E-Verify? Who's -- who's gonna be

1 responsible if something happens?

2           Then you have a problem with efficiency.

3 Our business is very fast paced. We have seven days to  
4 accomplish the same work every week. And we have  
5 scheduling. We have to get these things scheduled a few  
6 days out. And when we have nonresponsive  
7 subcontractors, typically we would fire them. But in  
8 this case, we're beholden to the certified contractor  
9 that the City has certified.

10       Q.    Okay. So that was a long answer. I want to go  
11 back and kind of walk through it.

12       A.    Okay.

13       Q.    Disadvantages created by the program is what  
14 we're talking about.

15            The first thing you told me is that you --  
16 you believe, and you feel, that you are being  
17 discriminated against as a white owner of a business  
18 that is -- the vast majority of your business is  
19 minority individuals.

20       A.    Correct.

21       Q.    How do you see that discrimination? What is  
22 the discrimination?

23       A.    Well, the fact that I have to submit 11 percent  
24 of a contract, which is designed to help the same  
25 people -- the people that I'm trying to help, I already

1 am helping, if that makes sense. Not helping, they work  
2 hard for me.

3 Q. Second thing you mentioned is a couple of risk  
4 factors associated with -- and as I understood you to  
5 say, and I'm gonna paraphrase your answers. Please  
6 correct me if I'm wrong. But I understand -- understood  
7 you to be saying if there's a risk in taking on a  
8 subcontractor that you don't know who may not be able to  
9 do the work, who may not have the proper insurance  
10 documents -- requirements -- to do the work, and none of  
11 that information goes to you. So you can't -- you can't  
12 independently verify any of those things. Is that -- is  
13 that fair?

14 A. Part of it.

15 Q. Okay. What part of it did I miss?

16 A. Well, the part of who's -- who's required to  
17 follow up on it. For example, let's say the City does  
18 this -- I don't know, but let's say the City says, "Hey,  
19 show us your insurance documents before you become  
20 certified." Okay. So they annually expire. And so  
21 whose responsibility is it to make sure that they're  
22 maintaining their insurance liabilities?

23 Q. So I think you agree with me that it's not your  
24 responsibility, correct?

25 A. Correct.

1 Q. And you don't know whether or not it is the  
2 City's responsibility?

3 A. I do not.

4 Q. You and your companies don't play any  
5 particular role in -- or any role at all, in making the  
6 determination that these firms should be MBE certified,  
7 correct?

8 A. Correct.

9 Q. All right. You don't know how they get on the  
10 City's list, but you're not making that decision?

11 A. Correct.

12 Q. And efficiency, you mentioned that you're --  
13 you can't go out and fire one of these subcontractors  
14 like you might be able to otherwise, correct?

15 A. We can't depend on them, right.

16 Q. And that's the situation we talked about  
17 earlier, where you have to go out and do the work  
18 yourself, and then invoice the City for the work  
19 yourself, and the City pays you for the work, correct?

20 A. Right. And that's why we made a decision to  
21 have our own forces. We don't -- you know, they're all  
22 employees, so that we have control over the scheduling  
23 and that kind of thing.

24 Q. Okay. Did I miss any of the disadvantages that  
25 you see that are cause to you and cause to your

1 businesses by the City's program?

2 A. Well, on your -- on your rebuttal there, you --  
3 you forgot the most important part, which is giving up  
4 11 percent of the contract.

5 Q. Right. And explain to me how that is a  
6 disadvantage.

7 A. I can go do it with my own people.

8 Again, we talked about the efficiency of  
9 it, the risk involved of using someone, you know. I  
10 mean, would you hire somebody without having a thorough  
11 interview with them and understanding, you know, what  
12 their operations are?

13 If I look down to the future and I say --  
14 let's say there's multiple City contracts that come out,  
15 or multiple Harris County contracts that come out, and  
16 now all of them require a 10 to 15 percent minority  
17 participation. The problem -- the disadvantage that  
18 that puts me in is the efficiency of, now instead of  
19 having one subcontractor, minority subcontractor, that  
20 does this particular contract for the City, I have one  
21 over here; I have one over here; I have one over here; I  
22 have one over here.

23 The reason that is, is because these are  
24 supposed to be small, disadvantaged businesses. So if I  
25 have a contract on the north side of town, these con- --

1 this subcontractor that's doing this one contract is not  
2 gonna be able to -- it doesn't have the capacity to take  
3 care of that contract. So, I'm managing down the road,  
4 multiple minority subcontracts that I had no idea who  
5 these people are.

6           So, if you look at a \$3 million business,  
7 eventually you have three to \$400,000 of -- you have no  
8 idea -- you have no control over a lot of that.

9       Q.    So there's a disadvantage associated with not  
10 being able -- in your view -- to keep the work in-house,  
11 and instead having to assign a percentage of the work  
12 out to a subcontractor and assign a portion of your  
13 profits to that subcontractor?

14       A.    Plus, the City program is metastasizing into  
15 other city government entities. So, since that's my  
16 primary market, my niche market, I'm very concerned that  
17 the disadvantage that it could put me in, not only today  
18 but over the years.

19           If all of my contracts require 10 percent,  
20 then I'm giving up, you know -- you know, several --  
21 several hundred thousand dollars a year to other people  
22 I have no confidence in. That could, in effect, cost me  
23 my future business and keep my employees employed.

24       Q.    Have we -- have we missed, or not talked about,  
25 any of the other disadvantages that you see caused by

1 the City's program?

2 A. Not that I can think of right now.

3 Q. Going back to that paragraph 7, your  
4 declarations references the MWSBE Program. That stands  
5 for Minority Women and Small Business Enterprise  
6 Program, right?

7 A. I believe so, yes.

8 Q. In your complaint, you tell me that you're not  
9 challenging the "W". You're not challenging the Women  
10 Business Enterprise Program. And you're not challenging  
11 the "S", Small Business Enterprise Program; is that  
12 correct?

13 A. Those are all -- those are all the same. Those  
14 are all -- programs are the same. I'm not quite  
15 understanding your question.

16 Q. That's fair. Let's go back to Exhibit,  
17 whatever it was 4 -- or 3, the complaint. And I'm on  
18 page 5.

19 A. Of which one?

20 Q. Exhibit 3, the -- the lawsuit. And I'm on the  
21 bottom of page 5 in paragraph 17.

22 A. Yes.

23 Q. And that -- that paragraph says, "Landscape  
24 consultants and Metropolitan do not challenge the City's  
25 preference program for either women-owned businesses or

1 small business enterprises." Is that a true statement?

2 A. I don't recall -- I think that -- I think  
3 what -- what we're saying here is that it's the City's  
4 preference to have those programs, not mine. I don't  
5 understand that -- how -- that's confused to me a little  
6 bit.

7 Q. Okay. Why --

8 A. Let me retract that. I think what we're saying  
9 here is, I'm not challenging that you have a program.  
10 I'm challenging the fact that I'm required to give 10  
11 percent of my contract to them.

12 Q. Specifically with regards to minority  
13 subcontractors?

14 A. Yes.

15 Q. Okay. Okay. Why -- why does Landscape, and  
16 why does Metropolitan, think the City's Minority  
17 Business Enterprise Program is unconstitutional?

18 MS. WILCOX: Object to form. You can  
19 answer.

20 A. Say that one more time.

21 Q. (By Mr. Stephens) Why does Landscape and  
22 Metropolitan -- well, let's start with Landscape. Why  
23 does Landscape think the City's MBE Program is  
24 unconstitutional?

25 A. Well, I think it violates my -- my right to



1 make decisions for my company in the -- in the way that  
2 I think would be healthy for my company, to make it  
3 successful. And that type of program, it competes with  
4 that interest.

5 Q. Does Metropolitan also think the City's program  
6 is unconstitutional?

7 A. Yes.

8 Q. And for the same reason?

9 A. Yes.

10 Q. Have Landscape or Metropolitan ever been  
11 suspended from performing a City of Houston contract?

12 A. No.

13 Q. Have Landscape or Metropolitan ever had a City  
14 of Houston contract canceled for failing to comply with  
15 the terms of the contract?

16 A. No.

17 Q. Is it Landscape's position that it has made  
18 good faith efforts to secure MBE participation on its  
19 current contract?

20 A. Yes.

21 Q. And those are -- those are the efforts we've  
22 discussed previously. Going out and finding X Scape  
23 and --

24 A. Yes.

25 Q. Is there any reason Landscape would not be able

1 to continue to exercise good faith efforts in the future  
2 on City of Houston contracts?

3 MS. WILCOX: Object to form. Calls for  
4 speculation. You can answer.

5 A. Again, it goes back to the efficiency issue.  
6 Why should I have to do that? Sure. If, you know, I  
7 mean, we're a small business, in the sense we're trying  
8 to survive. And if there's a contract that comes out  
9 that requires that again, we know what we're getting  
10 into. We think it's wrong. But we would -- we would  
11 make our good faith efforts to find one, secure one, and  
12 make good faith effort that they can perform the  
13 service, you know, basically -- solely for the -- to  
14 keep the -- our employees employed, as best we can.

15 Q. (By Mr. Stephens) And in the event that, as it  
16 sounds like has happened on your current contract, your  
17 future MBE subcontractor ghosts you -- doesn't answer  
18 your emails, doesn't show up to do the work -- what  
19 would you do?

20 MS. WILCOX: Object to form. Calls for  
21 speculation. Go ahead.

22 A. What -- what will I do? Perform the service on  
23 my own with my own forces.

24 Q. (By Mr. Stephens) Okay. What exactly is it  
25 that Landscape, as a non MBE company, has to do to

1 secure a City of Houston contract that an MBE prime  
2 contractor would not have to do?

3 A. Again, I mean, I have no idea. It should be  
4 the same. I don't know that for a hundred percent. But  
5 the City of Houston contract is very complex. The  
6 bidding process is very complex, in the sense that  
7 there's a lot of -- a lot of detail that has to go into  
8 it.

9 So, I'm assuming that if they were a prime  
10 minority-owned business, that they would follow the same  
11 things that we have to do to, you know, comply with the  
12 bid in order to be successful.

13 Q. Is it your position that you as a -- and by  
14 "you," I mean Landscape and Metropolitan. Is it your  
15 position that you are competing on an unequal playing  
16 field with minority prime contractors?

17 A. Can you re- -- I don't quite understand the  
18 gist of the under- -- underlying part of that question.  
19 Will you say it again?

20 Q. Sure, I'll rephrase it. You're not a minority  
21 prime contractor. You're a -- you're a white-owned  
22 prime contractor for landscaping contracts.

23 A. Okay.

24 Q. Is it your position that you're competing on an  
25 unequal playing field for City of Houston business with

1 minority prime contractors?

2 A. Yes.

3 Q. And how is that -- how is that?

4 A. Well, you know, not knowing the subcontractor  
5 -- the minority subcontractor. Not knowing, you know,  
6 what they would price something at when we ask them to  
7 do some work. We -- we have to take that into  
8 consideration in our own pricing. So, yeah, I think  
9 that puts us at a disadvantage, because all the -- most  
10 of the bids we do are low contract bids.

11 So, I've won bids barely by \$500 a year,  
12 and I've lost them, you know, by 10,000 a year. So --  
13 so it does put us at a disadvantage, because they are  
14 being assisted, okay, by the City. You know, they don't  
15 have to go out and do all the legwork that's required.  
16 They're not required to come to the pre-bid meetings.  
17 They're not required to -- there's -- they don't have  
18 very much responsibility, other than waiting for a prime  
19 contractor to call them. I'd be going off a little  
20 differently, but that's part of the problem.

21 Q. Well, you're talking right now about the  
22 subcontractors --

23 A. Right.

24 Q. -- which don't have to come to the bid  
25 meetings. Don't have to go out and find you; you have

1 to go out and find them.

2 I'm specifically asking how you, as a  
3 prime non-minority business, are treated differently  
4 from a minority prime business?

5 A. Differently in what way? I'm not quite sure I  
6 understand where you're coming from on that. I mean, if  
7 they're -- if they -- if that minority company does  
8 \$3 million a year, has 40 employees, and, you know, we  
9 go out, and we have both the same quality services, and  
10 we're in good faith -- we're in good standing with the  
11 State of Texas, then there wouldn't be any, but I don't  
12 know that.

13 Q. Okay. So you told me you think you're  
14 competing on an unequal playing field with minority  
15 primes, and I'm just trying to figure out how that is.

16 A. I'm trying to understand what -- what your  
17 basic question is first. Say that one more time, one  
18 more time -- understand that.

19 Q. You were asked -- well, let me use the words  
20 your complaint uses. "The City's MBE program treats  
21 businesses differently based on the race of their  
22 owners." That's what you tell me in your lawsuit.

23 A. Right.

24 Q. Which businesses is the program treating  
25 differently? Presumably your business --

1 A. True.

2 Q. -- and another prime contracting landscaping  
3 business; is that correct?

4 A. That's not what that says. I mean, it  
5 basically says that it's my company. I have no idea  
6 what other prime contractors do or perform. But it puts  
7 us at a disadvantage, because there's no reason for us  
8 to have to -- contractor, coming to an agreement with a  
9 subcontractor, when we can do that work on our own. So  
10 the disadvantage is that I have to give 10 percent to  
11 another company, when my company is fully capable and  
12 willing and able to do the work itself.

13 Q. So in your view, the disadvantage is not a  
14 disadvantage compared to some other business. It's a  
15 disadvantage compared to how much money you could have  
16 made on the contract if you were doing it all yourself?

17 A. Fair enough.

18 Q. Okay.

19 A. Put that a different way. I'd like to  
20 interject that, is that if --

21 Q. Let me ask the question so we have a clear  
22 record.

23 A. Okay.

24 Q. Do you have something you would like to add to  
25 your previous answer?

1 A. No, I'm good.

2 Q. Okay. Is your complaint that a minority prime  
3 contractor can satisfy an MBE participation goal with  
4 their own performance, whereas you cannot?

5 A. No. I didn't say -- I think if they're a  
6 prime, they should be -- they should be in the same  
7 standing that I'm in, whether they're a minority or not.  
8 I mean, if I'm a prime and they're a prime, then we're  
9 both primes.

10 What we're talking about, are -- are  
11 trying to help small minority businesses get started,  
12 whatever that means. And -- and try to assist them to  
13 grow their business. And that's a direct competition to  
14 me. 'Cause if we all feed all the minorities all these  
15 jobs, 10 percent here, 10 percent here, I'm not the only  
16 one -- eventually, they compete with you head-to-head,  
17 and then they're also minority certified. So when they  
18 go for the contract, the next contract that comes out,  
19 they're a prime. And they don't -- my understanding is  
20 they would not have to find a minority-owned  
21 subcontractor.

22 Q. Okay. And what is that understanding based on?

23 A. Common sense.

24 Q. Okay.

25 A. And just not --

1 (Reporter clarification.)

2 A. Just not understanding the program, the City's  
3 program, completely.

4 Q. Do you -- do you intend to continue to grow  
5 Landscape and Metropolitan's business?

6 A. Yes.

7 Q. Okay. Do you intend to continue to keep  
8 working for Landscape and Metropolitan in the future?

9 A. Yes.

10 Q. Do you have any plans to retire?

11 A. Nah, I don't think you can ever retire when you  
12 own a business, but -- you know -- family-owned  
13 business -- no, not really, unfortunately.

14 Q. How do you plan to continue to grow Landscape's  
15 business?

16 A. Hopefully, by getting rid of these programs  
17 would help. I mean, especially as they metastasize  
18 throughout the City. I mean, right there, you know --  
19 you know, most companies try to grow, you know, 10 --  
20 5 -- 10 -- 15 percent a year. But now we have a 10  
21 percent burden on top of that. So, now we have to grow  
22 25 percent a year to maintain, you know, a growth  
23 pattern that, you know, would be -- would be nice to  
24 have. I mean, it's -- it's kind a tie in your hands.  
25 10 percent -- you're out of the gate in 10 percent. So,



1 first you have to give up 10 percent, and then you have  
2 to grow it 20 percent -- or 11 percent, I'm sorry. I  
3 keep saying 10, but I'm referring to minority program  
4 requirements.

5 Q. I'm showing you what I'm marking as Exhibit 5.  
6 This is just a disastrous --

7 A. That was me 20 years ago.

8 Q. -- printout, so please ignore all the stuff at  
9 the top of each page.

10 But this is -- this is an article that  
11 summarizes an interview that you gave to -- that you  
12 appeared to have given to some publication. Does that  
13 seem right?

14 (Exhibit 5 marked.)

15 A. Yes.

16 Q. Okay.

17 A. Yeah. Uh-huh. Yes.

18 Q. Do you recall giving this kind of an interview?

19 A. To a publication specifically, no. I mean,  
20 this -- this looks like communication between myself and  
21 my attorneys that -- that worked with the publication.

22 Q. I -- I only really bring it up just to ask  
23 about how, in this article you talk about your -- your  
24 daughter is not particularly interested in the business,  
25 your son is. Your son doesn't want to sell it. Is all

1 that correct?

2 A. Yes.

3 Q. Okay. And you just told me you have no plans  
4 of retiring. I assume you have no plans on turning the  
5 business over to your son at any point; you intend to  
6 continue to own it?

7 A. I mean, he'll take on more and more  
8 responsibility, but not at this point --

9 Q. Okay.

10 A. -- not at this time.

11 Q. Okay. Okay. In the last two years, Landscape  
12 has successfully bid on and been awarded government  
13 contracts, including MBE participation goals, right?

14 A. Yes.

15 Q. And that includes more contracts -- it includes  
16 the City of Houston contract, and it includes some of  
17 the other contracts we talked about, like the Harris  
18 County contracts?

19 A. Yes.

20 Q. Do you intend to continue to bid on those kinds  
21 of contracts?

22 A. I have no choice in a lot -- in a lot of cases,  
23 because it's not like business is falling off the trees.  
24 So, you know, you have to make decisions. If you have  
25 40 employees, 45 employees, and you see where, you know,

1 you have to fill their schedules; sure I would,  
2 begrudgingly.

3 Q. One moment. I'm just going over my notes.  
4 Thank you, sir. I don't have any more questions for  
5 you, unless your attorney asks some questions and I have  
6 to follow up on. Mr. Sileo may have some questions.

7 MR. STEPHENS: I'll pass the witness then.

8 MS. WILCOX: Can we just clarify because  
9 Midtown didn't notice a deposition. Is this gonna be in  
10 his individual capacity, or what are we doing?

11 MR. SILEO: Well, the notice was for  
12 Mr. Thompson individually and also in his corporate  
13 capacity. And I'm a party of the case, so I get to  
14 depose him in his individual and in his corporate  
15 capacity as the notice stated.

16 MS. WILCOX: Right. I'm sure it's a  
17 different party. I mean, I'll allow it. But -- so  
18 you're planning to take his individual --

19 MR. SILEO: Yes.

20 MS. WILCOX: -- both individual and --  
21 okay.

22 (Cross-talk.)

23 MR. SILEO: Yes. You ready, sir?

24 THE WITNESS: Sure.

25 THE REPORTER: Hold on. Time out.

1 (Reporter clarification.)

2 EXAMINATION

3 BY MR. SILEO:

4 Q. So, my name is Brett Sileo, and I'm the  
5 attorney representing Midtown Management District. Do  
6 you understand that, sir?

7 A. Yes.

8 Q. Okay. So, first I just want to clarify the  
9 involvement that Landscape, and then that Metropolitan  
10 has had with Midtown Management District. Has Landscape  
11 ever done any work for Midtown?

12 A. No. It's been under Metropolitan Landscape  
13 Management.

14 Q. Did Landscape ever make any bid to do any work  
15 for Midtown?

16 A. No. Wouldn't have been necessary.

17 Q. Okay. And that's because the work that your  
18 companies were doing, Metropolitan was handling that  
19 work with Midtown, so there was no need for Landscape to  
20 also get involved. Is that basically why?

21 A. Well, they're basically one in the same. I  
22 mean, the two companies are one in the same.

23 Q. Okay.

24 A. I mean, they share employees. They share  
25 resources, things of that nature.

1 Q. Was Metropolitan working under contract with  
2 Midtown at the time that you bought the business?

3 A. Yes.

4 Q. Okay. Tell me about the history of  
5 Metropolitan's work for Midtown.

6 A. It goes back a long, long ways. It's changed  
7 over the years. Again you're asking me to go back, you  
8 know, 15 to 18, 20 years. But that was one of the  
9 contracts that the previous -- the seller of the  
10 business had at the time we acquired -- we purchased the  
11 company.

12 And we -- we had maintained that contract  
13 for -- I'm not sure if it was the exact same contract or  
14 the same work over those years. But we had maintained  
15 that contract, on and off, until -- we still do work for  
16 Midtown, so up to today.

17 Q. Okay. Who did you buy that company from?

18 A. The individual or the company itself?

19 Q. Well, both really.

20 A. A guy by the name of Wes Dryden.

21 Q. And is Metropolitan performing work for Midtown  
22 today?

23 A. Yes.

24 Q. What is the scope of work under the current  
25 contract?

1 A. Well, it's much smaller than it's ever been,  
2 but we maintain Baldwin Park and Glover Park.

3 Q. Did you bid for that contract at the same time  
4 that you did for the Field Maintenance Services Project?

5 A. I believe so. There were three -- there were  
6 three bids, yes, and that was the one that we were  
7 awarded recently.

8 Q. What were the three bids?

9 A. Well, one was Field Maintenance. And then it  
10 was -- there was -- it was Field Maintenance, which is  
11 the one that we had for many, many years, on and off.  
12 And then Glover Parks, we've had for many years, on and  
13 off. And I don't remember the third one, off the top of  
14 my head. But there were three of them that came out at  
15 the same time.

16 Q. So, for the Field Maintenance Services, you  
17 said you had that contract on and off. Can you tell me  
18 about what years Metropolitan performed those services?

19 A. Well, out of the 18 years since I've owned the  
20 business, we've probably had it an equivalent of about  
21 12 years, on and off. I can't tell you exactly.

22 Like, what happens is -- is you have a  
23 bid, and if you keep it for a couple of years, they  
24 rebid it, and somebody else comes in and goes lower, or  
25 whatever, gets the contract. But over that 18-year

1 span, we probably -- we had that contract for probably  
2 12 to 14 years of that 18.

3 Q. Okay. And what about for the -- for the Park  
4 contract?

5 A. About the same. Probably about the same.

6 Q. So right now your company is performing the  
7 landscape services for Baldwin Park and Glover Park?

8 A. Yes.

9 Q. Okay. For the Field Maintenance Services  
10 contract, that's the one that you did not get the  
11 current bid, correct?

12 A. The most recent current bid, yes.

13 Q. What was the scope of work under that contract?

14 A. Well, the scope of work was that the contractor  
15 was to provide eight, full-time employees, working  
16 Monday through Friday in the normal work hours. We were  
17 responsible for maintaining the entire Midtown District,  
18 other than the parks. And there might have been  
19 something else that was separate, you know, including  
20 trimming, maintenance, bed maintenance for the District.

21 Q. Can you tell me what injury you believe  
22 Metropolitan suffered because of Midtown's Minority  
23 Women and Disadvantaged Business Program?

24 A. Oh, yeah. I mean, you know, we lost the last  
25 contract because of it. We lost the next opportunity to

1 keep doing the work because of the program.

2 Q. Okay. Do you intend to bid for that Field  
3 Services Project in the future, if it comes up for bid  
4 again?

5 A. Yes, of course. Depending on the -- the  
6 minority programs in that.

7 Q. Okay. Was the same Minority, Women, and  
8 Disadvantaged Business Program for Midtown applied to  
9 the contract for Baldwin and Glover Park?

10 A. I think so. I believe so.

11 Q. And then Metropolitan was awarded that contract  
12 even under that program, correct?

13 A. Yes.

14 Q. What do you understand to be the way that  
15 Midtown's Minority, Women, Disadvantaged Business  
16 Program operates?

17 A. Well, it's different than the City's. There  
18 are -- I guess there's a factoring that they use. It's  
19 a point system that is weighed against all the other  
20 competitors. And you have price. You have reputation,  
21 minority contract, if you're a minority. And I believe  
22 there was one other. But the minority aspect of the --  
23 of the bid gives them a 10 percent advantage before  
24 anybody else comes in to bid on that, and that's the  
25 disadvantage.



1 Q. Is it your understanding that that same policy  
2 has been in effect during the entire time that you have  
3 been bidding on work for Midtown, or do you think it's  
4 changed over the years?

5 A. There's been different variations over the  
6 years. But, again, we take that into consideration when  
7 we -- when we price it. You know, it's a valuable --  
8 it's a valuable contract to our company because it  
9 employes, you know, our eight people full time. And so,  
10 there's a risk of losing it. Where do you put these  
11 eight people if you lose it?

12 And so, we would take those things into  
13 consideration. Like, how do we make up that 10 percent  
14 disadvantage that we have? And there's very little ways  
15 to do that, other than your price. Because we had the  
16 reputation. We've never been fired. We always provided  
17 good service for Midtown.

18 Q. What about Landscape? What injury did  
19 Landscape suffer as a result of Midtown's Minority,  
20 Disadvantaged, Business Woman (sic) policy?

21 A. Landscape, not in itself, but as the collective  
22 businesses, they're one in the same.

23 Q. So you're not contending Landscape had a  
24 separate injury from Metropolitan as a result of  
25 Midtown's policy?

1 A. Well, I mean, if you're connected. If your two  
2 arms are connected and you get one cut off, I guess  
3 that's a problem.

4 Q. Did Landscape ever intend to make any bids with  
5 Midtown for projects?

6 A. There was no need to, since Metropolitan was  
7 the lead on that particular contract.

8 Q. So for the contract that you have now with  
9 Midtown, who is your company's contact person with  
10 Midtown?

11 A. There's different people. But that would be  
12 something that my son, basically, deals directly with --  
13 the general manager deals directly with.

14 Q. And that's Jeremy Thompson?

15 A. Yes. He's very well known there.

16 Q. Who prepared the bid for the Field Manages --  
17 Field Maintenance Services and for the Park Project in  
18 2022?

19 A. Jeremy Thompson, myself and Lindsey Thompson.

20 Q. Okay. How were you aware that those two  
21 contracts were coming up to bid?

22 A. How am I aware?

23 Q. How did you learn that, hey, the Midtown is  
24 going out for bids for these two landscaping contracts?

25 A. I think it's a public notification. And, in

1 the contacts that we have, we would be told that, you  
2 know, hey, this is coming up for bid. Or -- or we know  
3 that they're coming up for bid from the messages we hear  
4 from the board of directors that, you know, they're  
5 gonna put it out for bid. It's on the -- word on the  
6 street --

7 Q. Okay. So this is -- you understand the time  
8 period for this? The bids were out. The notices were  
9 published in October of 2022, and then your bid was in  
10 November of 2022. Does that sound about right to you?

11 A. Sounds about right, yeah.

12 Q. Was Metropolitan working on current projects in  
13 the Fall of 2022 for Midtown?

14 A. Well, we had the contract. We were operating  
15 under that contract.

16 Q. Did you have both, the Field Maintenance  
17 Services contract and the Park contract, in 2022?

18 A. I believe so.

19 Q. What was your understanding about what you  
20 would have to show to be certified as a minority or  
21 woman or disadvantaged business to qualify for Midtown's  
22 policy?

23 A. Well, my understanding that the City of Houston  
24 Certified Program was acceptable. And then, I think  
25 there was a couple of other ones; Women's Business

1 Association. There was probably two or three that would  
2 have sufficed. Or maybe the HUB -- HUB from the State  
3 of Texas, but I can't remember exactly.

4 MR. SILEO: Okay. Is our next Exhibit 5  
5 or is it 6?

6 THE REPORTER: 6.

7 MR. SILEO: Okay. There's -- it should be  
8 as MMD230. It starts with that. Can you make that  
9 Exhibit 6, please? I'm sorry. I told you the wrong  
10 number. It's 242. I'm sorry. I didn't turn the page  
11 here.

12 (Exhibit 6 marked.)

13 Q. (By Mr. Sileo) Mr. Thompson, we just marked  
14 Exhibit Number 6, documents that were Bates numbered  
15 MMD242 through 254.

16 MS. WILCOX: Is that the only copy you  
17 have?

18 MR. SILEO: No. I have --

19 MS. WILCOX: Can I get one for me too?

20 Q. (By Mr. Sileo) All right. So Exhibit Number 6,  
21 at the top it says, "Midtown Management District  
22 Invitation To Bid Field Maintenance Services Project."  
23 Do you recognize that document?

24 A. Yes.

25 Q. And, basically, can you tell me what this is?

1 A. This is an Invitation to Bid for Field  
2 Maintenance Service work for the Midtown Management  
3 District, which is -- this is the work that we had been  
4 doing, on and off, for the last 14 years or so.

5 Q. All right. And is this the Invitation To Bid  
6 for the project that you were not awarded, about which  
7 you complain in this lawsuit?

8 A. Yes.

9 Q. All right. So you understood though, from the  
10 language in this Invitation To Bid, that the District  
11 did have a program for minority women and disadvantaged  
12 businesses. Did you -- did you look on page 4 of this  
13 document?

14 A. Yes.

15 Q. Okay. Do you see in the section "Participation  
16 Of Minority, Women, and Disadvantaged Business  
17 Enterprises" at the top --

18 A. Yes.

19 Q. The last sentence of that paragraph says "MWDBE  
20 firms must be certified by the City of Houston, Houston  
21 Minority Business Council and/or The Houston Women's  
22 Business Council. Proof of such certification should be  
23 included with the response."

24 All right. So you understood there was  
25 three ways to get certified under the MWDBE Program for

1 Midtown?

2 A. Yes.

3 Q. Okay. Did your -- okay. Earlier you talked in  
4 your testimony about your company's trying to get  
5 certified by the City of Houston and then decided not to  
6 go forward with that, correct?

7 A. Correct.

8 Q. Okay. And was that both, for Metropolitan and  
9 for Landscape?

10 A. Yes. They're one in the same, yes.

11 Q. Okay. And did you make any effort to get  
12 certified by the Houston Minority Business Council?

13 A. No.

14 Q. What about the Houston Women's Business  
15 Council?

16 A. No.

17 Q. Do you know what the criteria would be to get  
18 certified as a woman-owned business by the Houston  
19 Women's Business Council would be?

20 A. No.

21 Q. You never looked into that?

22 A. No.

23 Q. Okay.

24 MR. SILEO: I want to look -- mark the  
25 next Exhibit Number 7. It should be MMD229.

1 (Exhibit 7 marked.)

2 Q. (By Mr. Sileo) Mr. Thompson, at the top of that  
3 document it says, "Request to Clarify Bid Form." Do you  
4 recognize that document?

5 A. Yes.

6 Q. What is your understanding of what this  
7 document is?

8 A. Whether you're a minority, woman-owned, or  
9 disadvantaged business enterprise, City of Houston.

10 Q. It says that the contact name at the bottom is  
11 Theresa Thompson. So, that's your wife who is the --  
12 also the owner of Metropolitan?

13 A. Yes.

14 Q. Is that her signature there?

15 A. Yes.

16 Q. Okay. How was it communicated to you that you  
17 needed to sign and return this Request to Clarify Bid  
18 Form?

19 A. I believe it was just part of the bid packet.

20 Q. Okay. So do you see where it says,  
21 "Clarification I: Clarify whether your company is a  
22 Minority, Women, or Disadvantaged Business Enterprise  
23 (MWD BE) certified by the City of Houston, Houston  
24 Minority Business Council, and/or the Houston Women's  
25 Business Council." Do you see that you check yes?

1 A. Yes.

2 Q. Okay. Why did your company check, or X, yes on  
3 this document?

4 A. Well, it says, "Note: If yes, please attach  
5 certificate of City of Houston Minority Council." And  
6 we put a note on there that says, "Metropolitan  
7 Landscape has always been owned at 51 percent by Theresa  
8 Thompson. Metropolitan has been HUB certified by the  
9 State of Texas. And Metropolitan does not have one of  
10 the three certificates requested."

11 Q. So when you checked yes, saying that you've  
12 been certified by one of those three different entities,  
13 that actually wasn't correct, was it?

14 A. Not -- not -- not in how you're looking at it,  
15 no.

16 Q. Okay. Why didn't your company, either one,  
17 Landscape or Metropolitan, pursue certification with the  
18 Houston Women's Business Council if the company is  
19 51 percent owned by Ms. Thompson?

20 A. Well, I think it's because of the requirements  
21 that they have. We didn't investigate it, but we  
22 assumed it would be pretty similar to the City's  
23 program.

24 Q. Okay. But you don't know that. You were just  
25 assuming then, correct?



1 A. Correct.

2 Q. You never reached out to the Houston Women's  
3 Business Council to see what their requirements would  
4 be, did you?

5 A. No.

6 Q. Okay. And so in this statement that you made  
7 on this -- or, I guess, that your wife signed to the  
8 Request to Clarify Bid Form, it says that Metropolitan  
9 has always been owned at 50 (sic) percent by Theresa M.  
10 Thompson. But earlier you said it was 50/50, so which  
11 one is correct?

12 A. I could have -- I could have made a mistake  
13 there. I believe that when we -- at one time were  
14 certified with the Houston -- with the Texas HUB  
15 Program, that in order to be certified for them, we had  
16 to list her as 51 percent ownership. So we were HUB  
17 certified for many years. And then when that ended, we  
18 decided not to renew it.

19 Q. Okay. What happened with the Texas HUB  
20 Certified Program then?

21 A. Just expired, you know, many years ago.

22 Q. What were the requirements to get certified by  
23 the Texas program?

24 A. I can't remember.

25 Q. Okay. Do you have any --

1 A. But we did have a certification. We did get  
2 certified for, like, a three to five-year period.

3 Q. Okay. But you're telling now that that's  
4 expired because that program has gone out?

5 A. Yeah.

6 Q. Okay. Do you have any documents to show what  
7 percentage ownership you have in either company compared  
8 to your wife?

9 A. Sure. I'm sure we do somewhere. I'm not  
10 exactly sure where it is.

11 Q. Okay. Do you know what kind of documents those  
12 would be?

13 A. I'm sure it would be a State filing of some  
14 kind.

15 MR. SILEO: Okay. And then I want to go  
16 to the next Exhibit 8. This is MMD70. Did I give that  
17 to you?

18 THE REPORTER: Hold on.

19 (Exhibit 8 marked.)

20 MR. SILEO: It's 70 through 89.

21 Q. (By Mr. Sileo) And this document we marked as  
22 Exhibit Number 8, it says -- it has Metropolitan  
23 Landscape Management's logo. And it says it's  
24 "Invitation to Bid Field Maintenance Service Project."  
25 Do you recognize this document?

1 A. Yes. It looks like our response, yes.

2 Q. (By Mr. Sileo) Okay. Can you tell me briefly  
3 what this is?

4 A. What this document is?

5 Q. Yes.

6 A. This is our response to the Field Maintenance  
7 Services Project Bid. I'm sure we use the same type of  
8 documents for the other bids that were outside the  
9 Parks.

10 Q. So this is basically what you turned in to  
11 Midtown to say, "Hey, we're bidding on the job. We want  
12 this contract to do the Field Maintenance Services  
13 Project"?

14 A. Sure.

15 Q. Okay. So you have a -- on the second page,  
16 which is MMD71, you have a bid price and then you have  
17 the supplemental bid prices. Do you remember what the  
18 -- why there's a supplemental bid, or what that was  
19 supposed to be for?

20 A. Well, it says here that it's for special events  
21 for the weekends. So, occasionally, we would get a call  
22 from our contact there that they were having a special  
23 event at one of the parks, and they wanted to have  
24 laborers out there to clean up or do some work. So,  
25 those were the rates outside of the normal.

1 Q. Okay. So just below that on this page, it has  
2 a section about the MWDBE status. Is your company a  
3 Minority, Women, or Disadvantaged Business Enterprise  
4 certified by the City of Houston, Houston Minority  
5 Business Council, and/or the Houston Women's Business  
6 Council. And what did you check there?

7 A. We checked no.

8 Q. Okay. So I'm still kind of wondering how that  
9 request for bid clarification ended up getting drafted,  
10 if you already checked no to say, no, we're not a  
11 certified minority or woman-owned business?

12 A. I really don't have any idea how that could  
13 have happened, but it was obviously confused.

14 Q. Okay. Who -- well, so, obviously, your wife  
15 was the one who handled filling out that clarification  
16 form cause her signature is on it.

17 A. Right.

18 Q. Correct? So, do you know who would have  
19 prepared this page that we're looking at right now in  
20 Exhibit 8, that's MMD71, that checked no?

21 A. Yeah. I think that might have -- that's  
22 probably -- that was probably me.

23 Q. Okay.

24 A. But I'm not a hundred percent. I can't  
25 remember exactly.

1 Q. Okay. Was there anything out of the routine  
2 with your submission for this bid, compared to the other  
3 projects you've bid on for Midtown Management?

4 A. Could you say that again?

5 Q. Was there anything out of the routine in the  
6 way you prepared this bid compared to the other projects  
7 that you've submitted bids for, for Midtown Management  
8 District?

9 A. Not that I can think of.

10 Q. Okay. Was similar materials turned in for your  
11 bid for the Park Maintenance Project?

12 A. I think so. I think they were standalone, and  
13 each had individual packages, so we probably just copied  
14 that in for that.

15 Q. Okay. And you just -- obviously, you'd have a  
16 different bid price because it's a different project.

17 A. Correct.

18 Q. Okay. Let me look -- look back at Exhibit  
19 Number 3, which is your complaint.

20 A. Exhibit Number 3?

21 Q. Yeah. And give me just a second here to --

22 A. Okay.

23 Q. And if we can go down to Page 10, because  
24 that's where you start talking about the Midtown  
25 Management District separately from the City of Houston.

1 A. Okay.

2 Q. So, in paragraph 36 in your complaint, it says,  
3 "Midtown Management District also communicates its MWDBE  
4 policy through its published criteria for evaluating  
5 bids."

6 Were you aware of what criteria was going  
7 to be used to evaluate your bid --

8 A. Absolutely.

9 Q. -- at the time you submitted it?

10 A. Absolutely.

11 Q. Okay. And how do you feel that the bidding  
12 criteria put your company at a disadvantage, either  
13 Landscape or Metropolitan?

14 A. Okay. Well, let's go to -- let's go to the  
15 Field Maintenance Project on Exhibit 6, page 4. It's  
16 where it shows you evaluation criteria.

17 Q. Okay.

18 A. All right. So, we've had this contract on and  
19 off, many, many years. And this is the same type of bid  
20 that we've always submitted -- similar. I'm not sure if  
21 this point system was always around, but in this  
22 particular case it is.

23 And so, the criteria say Financial  
24 Consideration is worth 50 points. Organizational  
25 Qualifications and References are 25 points. The

1 Proposed Approach is 15 points. And Minority Women  
2 Disadvantaged Business Enterprises automatically get 10  
3 points starting out. So that puts me at a 10 percent  
4 disadvantage on the points system.

5           When we got the bid results, we won on  
6 Financial Consideration, which is a low-bid contract,  
7 which should be the primary objective, which it is  
8 because it's weighted so heavily. Organizational  
9 Qualifications and References. I'm sure we scored high  
10 on that. I was a little surprised at some of the other  
11 ones that Midtown had very little working relationship  
12 with scored as high as that. And the Proposed Approach,  
13 I'm sure we scored high on that because we'd had the  
14 contract on and off, and very little problems with the  
15 contract over the 15 -- 18 years we've had it, on and  
16 off.

17           So, right -- so when this was considered,  
18 we had to consider the -- the largeness of the contract  
19 and how it was part of our business, eight employees.  
20 We had to take -- we took the pricing down in order to  
21 compensate for that. But we lost the bid because we got  
22 no points for the Minority Program.

23       Q. Your company, in fact, was not the lowest  
24 bidder on the project, was it? If you look in the  
25 complaint, there's a bid chart that was included in your

1 complaint.

2 A. Yeah, I can't remember if we were the low --

3 Q. Okay. Can you look there in the complaint?

4 A. Where is it?

5 Q. It's that chart that is just below --

6 A. In the same exhibit?

7 Q. Right.

8 MS. WILCOX: No. He's in Exhibit 3 now.

9 THE WITNESS: I'm sorry?

10 MS. WILCOX: Back to Exhibit 3.

11 Q. (By Mr. Sileo) Oh, I'm sorry, yeah. Okay.

12 We're back to Exhibit 3. It's on page 12.

13 A. Okay. Let me see.

14 MR. STEPHENS: Brett, I'll say, when I --

15 when I printed this out, I didn't print any of the

16 exhibits.

17 MS. WILCOX: -- it's in it.

18 MR. SILEO: It's -- it's not - it's --

19 it's in there. Actually, you know what? Part of that

20 was blacked out. I'll just make this Exhibit Number 9.

21 Exhibit 9 is Bates labeled MMD001.

22 MS. WILCOX: It's okay. We're going to

23 give you another copy.

24 (Exhibit 9 marked.)

25 Q. (By Mr. Sileo) Exhibit 9 is Bates labeled



1 MMD001. So, do you recognize that as the Midtown  
2 Management District's bid tabulation for the Field  
3 Management -- Field Maintenance Services Project?

4 A. Yes.

5 THE VIDEOGRAPHER: Your mic is off,  
6 please. Thank you.

7 Q. (By Mr. Sileo) All right. How did you obtain  
8 this document?

9 A. It was requested through our con- -- one of our  
10 contacts that provide us with the bid tabs, or it was  
11 sent out. I can't remember exactly.

12 Q. Do you see under financial consideration that  
13 Four Eleven, LLC scored 50 points and Metropolitan  
14 scored 46.14?

15 A. Okay.

16 Q. All right. So does that tell you that  
17 Metropolitan was not the lowest bidder, just on the pure  
18 financial part?

19 A. If that's the only consideration, yes.

20 Q. Okay. All right.

21 A. If that's truly the only consideration, yeah.

22 Q. And then you can see that y'all scored 84.98  
23 points under this column, and that SMC Landscape  
24 Services ended up with 87.68?

25 A. Uh-huh.

1 Q. Okay. That's a yes?

2 A. Say that one more time.

3 Q. Is that a yes? Because you said "uh-huh" and  
4 the court reporter --

5 A. Oh, yes.

6 Q. -- can't really --

7 A. Yes.

8 Q. -- get that down --

9 A. Okay, yes.

10 Q. -- without words.

11 Okay. So, it's your understanding that  
12 SMC Landscape Services is now performing the work under  
13 this contract?

14 A. I didn't know that, specifically.

15 Q. Okay. Are you familiar with their work?

16 A. I've heard of them.

17 Q. Okay. Have you ever used them as a  
18 subcontractor on any of your projects?

19 A. No, not that I'm aware of.

20 Q. All right. How about Four Eleven, LLC? Have  
21 you ever used them as a subcontractor on any of your  
22 company's projects?

23 A. No.

24 Q. What about SV Multi-Services, LLC?

25 A. No, not that I'm aware of.

1 Q. Okay. You said you had eight employees working  
2 on the project. Was that eight on the Field Maintenance  
3 Service Projects alone, or did that include the Park  
4 Project as well?

5 A. That would be the Field Maintenance.

6 Q. Okay. How many employees do you have currently  
7 working on the project for Baldwin and Glover Parks for  
8 Midtown?

9 A. I think there's probably a crew of two or three  
10 that go there when the services are needed.

11 Q. Okay.

12 A. But it's -- it's -- they're not -- they're not  
13 that time-consuming.

14 Q. Okay. Looking back at Exhibit Number 3, which  
15 is your complaint, back on page 11. Okay. Paragraph  
16 38, you say, "Midtown Management District did not  
17 conduct a market study to support its policy that awards  
18 points based on the race of a business's owner."

19 What kind of study do you believe that  
20 Midtown should have done?

21 MS. WILCOX: Object to form. You can  
22 answer.

23 A. I'm not sure I'm understanding your question.

24 Q. (By Mr. Sileo) Okay. So there's a sentence in  
25 here --

1 A. Yeah.

2 Q. -- paragraph 38 that says, "Midtown Management  
3 District did not conduct a market study to support its  
4 policy that awards points based on the race of a  
5 business's owner."

6 Okay. Why was that important for you to  
7 allege in your complaint?

8 A. Well, because I would think that --

9 MS. WILCOX: Object to form. Go ahead.

10 A. I -- I would expect that if -- if it was  
11 necessary to have that high of a weight for a contract  
12 for a minority business ownership, then, you know,  
13 what -- what -- what did the study -- what study  
14 supported that, basically?

15 Q. (By Mr. Sileo) Okay. So let's go down to  
16 paragraph 40. You say, "Plaintiffs are majority-owned  
17 by individuals who cannot qualify as minority-owned and  
18 cannot qualify for a W -- I'm sorry -- for a MWDBE  
19 preference. Plaintiffs cannot be certified as a MBE or  
20 WBE by the City." Okay. But you didn't say whether or  
21 not either one of your companies could be certified by  
22 the Houston Women's Business Council. Why did you leave  
23 that off of your complaint?

24 A. I'm not sure why that was left of.

25 Q. Okay. And, in fact, you don't know whether or

1 not your companies could be certified by the Houston  
2 Women's Business Council, do you?

3 A. I'm pretty sure we couldn't be.

4 Q. But you don't know that for a fact?

5 A. I do not know that for a fact.

6 THE REPORTER: Did you say, "I'm pretty  
7 sure we couldn't be"?

8 A. I don't know that we could qualify, yes. I  
9 mean, isn't the point of this thing to help a company  
10 that's small to grow its business. So a lot of these  
11 programs, not only do you have to be a female owner,  
12 they're all basically the same. You have to be able to  
13 show that you're operating the business -- the female or  
14 the minority is operating the majority of the business,  
15 has a financial interest in it, and only does so much  
16 revenue per year.

17 So, I think it's -- in this case, it would  
18 be a combination of, you know, the financial -- well,  
19 not the financial, but, more along, the size of the  
20 company would not qualify.

21 Q. Do you believe that minority-owned businesses,  
22 landscaping companies in particular, have been  
23 historically disadvantaged in the contracting process?

24 A. No.

25 Q. Do you believe women-owned businesses have been

1 historically disadvantaged in the contracting process?

2 A. In the con- -- what contracting process?

3 Q. Well, in land- -- in the landscaping. Women in  
4 the landscaping business --

5 A. No.

6 Q. -- do you think women-owned businesses have  
7 been historically disadvantaged in contracting?

8 (Cross-talk.)

9 MS. WILCOX: Object to form, but go ahead.

10 A. Not at all. I know some female-owned  
11 landscaping businesses that are twice -- three times as  
12 big as me. So, they can kick my butt on a program like  
13 this.

14 Q. (By Mr. Sileo) Do you think small businesses  
15 have been historically disadvantaged in contracting with  
16 the government, focusing specifically on landscaping  
17 companies?

18 MS. WILCOX: Object to form.

19 A. In which way? What do you mean?

20 Q. (By Mr. Sileo) Well, in -- in any way. Do you  
21 think it's been more difficult for small businesses to  
22 get contracts for landscaping with the government than  
23 larger landscaping companies?

24 A. No. I think landscaping is not rocket science,  
25 okay. So, it's -- it's not a complicated business.

1 It's a matter of doing the work that everybody else has  
2 been doing. Figuring out how much the costs are and  
3 making a bid and following the rules in the programs.

4 Q. Okay.

5 A. I don't think so.

6 Q. So what damages is Landscape and Metropolitan  
7 seeking from Midtown Management District in this  
8 lawsuit?

9 MS. WILCOX: Objection. Calls for a legal  
10 conclusion.

11 (Court reporter clarification.)

12 Q. (By Mr. Sileo) Well, let me just confirm. You  
13 and your companies are not seeking monetary damages from  
14 Midtown Management District; is that right?

15 A. That's correct.

16 Q. Okay. What do you want the Court to do if you  
17 successfully prevail on your claims?

18 A. I want this type of program eliminated. I  
19 don't think -- I don't think it's necessary to have --  
20 to give one set, a group of people, an advantage over  
21 another group.

22 Q. Is your issue with the way this program is  
23 implemented or the -- the details of the policy Midtown  
24 has, or is it having any policy at all that gives any  
25 preference to minorities or women-owned businesses?

1 MS. WILCOX: Object to form. Go ahead.

2 A. Well, I think that -- I mean, if you don't have  
3 a study supporting the fact that that's needed, then why  
4 is it there? So, yeah. My -- my thing is to get rid of  
5 the policy. I don't think you need a policy, 'cause I  
6 don't believe there is discrimination. I compete with  
7 all -- all types of companies. Some that are small  
8 business, some that are owned by women, some that are  
9 owned by, you know, other minorities. And it's not a  
10 complicated business in that sense. It requires a lot  
11 of work, as far as, on-the-ground work, and you have to  
12 be able to comply with the contract requirements, which  
13 are not that difficult.

14 Q. (By Mr. Sileo) Okay.

15 A. So you're giving an advantage to people that  
16 don't necessarily need one.

17 Q. Okay. So, I wanted to clarify. So, am I  
18 correct in saying you want the Court to end the policy,  
19 not to reform or change it; is that right?

20 A. Correct.

21 Q. Okay. Let me look at -- what are we on, Number  
22 10 now?

23 THE REPORTER: Yes.

24 (Exhibit 10 marked.)

25 Q. (By Mr. Sileo) Okay. Which is the -- part of



1 the Texas Local Government Code, which is Midtown  
2 Management District 350, Bates number. It should be at  
3 the very bottom of that stack.

4 So, Mr. Thompson, marked as Exhibit Number  
5 10, part of the Texas Statutes. It's Local Government  
6 Code Section 375.222, Disadvantaged Businesses, which  
7 applies to management districts, such as Midtown  
8 Management Company. Are you familiar at all with this  
9 statute?

10 A. No.

11 Q. Let's look at Part (B) here.

12 A. (B)?

13 Q. Okay. This, 375.222 (B) says, "A district  
14 shall establish one or more programs designed to  
15 increase participation by disadvantaged businesses in  
16 public contract awards."

17 Were you aware of the statutory dictate by  
18 the Texas Legislature to the Management District to have  
19 a Disadvantaged Business Program?

20 A. No.

21 Q. Do you -- are you contending that this Texas  
22 Statute, Local Government Code 375.222, is  
23 unconstitutional because it directs the district to  
24 establish a program to increase participation by  
25 disadvantaged businesses --

1 MS. WILCOX: Object --

2 Q. (By Mr. Sileo) -- in public contract awards?

3 MS. WILCOX: Object to form. You can  
4 answer.

5 A. Can you ask that one more time?

6 Q. (By Mr. Sileo) Okay. Do you think this code --

7 A. Yeah.

8 Q. -- section, Local Government Code Section  
9 375.222, is unconstitutional? It should be set aside by  
10 the Court because it dictates that the district should  
11 have a disadvantaged business program for public  
12 contract awards?

13 MS. WILCOX: Object to form.

14 A. No. But there should be a basis for it. I  
15 mean, what's the underlying basis for establishing this?  
16 What are the -- where are the -- where is the proof that  
17 it's needed?

18 Q. (By Mr. Sileo) Are you contending that the  
19 District hasn't followed this statute, or do you -- you  
20 don't know because you're not familiar with the statute?

21 A. I'm not familiar with the statute. But, again,  
22 it goes by, you know, where -- you know, where is the  
23 basis for it? We already talked about the fact that,  
24 you know, I didn't think there was a -- you know, that  
25 they needed to have a help up to compete against me.

1 So, I don't know -- what's the basis that everybody  
2 thinks -- the Texas State Legislature thinks that we  
3 have to have this kind of a program? Where is the basis  
4 of that? I can't comment, because I don't know.

5 Q. Okay. If Midtown established there was a basis  
6 for having a program for disadvantaged businesses, would  
7 you then agree that they should have some sort of policy  
8 to increase participation by those disadvantaged  
9 businesses in the public contracting realm?

10 A. No. Because I don't think they're -- they're  
11 being disadvantaged. I don't think the landscaping  
12 business is one that necessarily has to have anything  
13 like that.

14 Q. Okay. So you don't think there's ever been  
15 discrimination in public contracting for landscaping  
16 businesses?

17 A. I have no idea. All I know is that 95 percent  
18 of my employees are Hispanic, and so my goal is to keep  
19 them working, you know. And for me to have to give a  
20 percentage of my business to other people so they can  
21 support their minority employees doesn't make sense to  
22 me.

23 Q. Okay. When Metropolitan lost the contract for  
24 the Midtown Field Maintenance Services Project, did you  
25 have to lay off any of your employees?

1 A. No. Immediately we moved them to other --  
2 other locations. I think a couple of people quit, but I  
3 don't -- I don't remember that specifically.

4 Q. Since Metropolitan lost its bid to perform the  
5 Field Maintenance Services Project for Midtown, about  
6 how many projects has Metropolitan successfully bid on?  
7 This is from November of 2022. So, basically, in the  
8 last two years, how many projects has Metropolitan  
9 successfully bid on?

10 A. Oh gosh, probably a dozen.

11 Q. All right. And what about Landscape?

12 A. Between the two of them, probably a dozen.

13 Q. Okay. You don't really separate that out too  
14 clearly in your mind as far as who has what contract?

15 A. It's not necessary.

16 Q. Okay. About, in the last two years, if you've  
17 gained about a dozen bids, how many bids have you lost?

18 A. Probably about seven or eight.

19 Q. Do you think generally your revenue for 2024 is  
20 more, equal or less than your revenue for 2022 for both  
21 of your companies?

22 A. Probably just a little bit more. That's --  
23 that's an estimate. I really don't have this in front  
24 of me.

25 Q. Yeah. You definitely -- you'd have to look at

1 your financial records and --

2 A. Right.

3 Q. -- probably get your accounting people to get  
4 involved.

5 Is Jeremy Thompson the person that has the  
6 most information about the contacts and communication  
7 between Metropolitan and the Midtown Management  
8 District?

9 A. Most recently, yes.

10 Q. Is there a particular supervisor amongst the  
11 workers that you have working right now on the Park  
12 Project? Who -- whose -- how -- average employee, who  
13 -- you know, how do they report up the chain?

14 A. As we spoke earlier, basically, it's Jeremy  
15 Thompson, General Manager. Edwin Castillo is the  
16 Operations Manager. There's about 10 to 12 supervisors  
17 that the crews report to. There will be three to four  
18 people on each crew. That's kind of how that works.

19 Each crew has a schedule. I'm sure it  
20 flexes once in awhile. They will move things around a  
21 little bit. But there's typically a supervisor that  
22 reports to the operations manager that would be taking  
23 care of the parks in Midtown. A crew of, like, two or  
24 three would be part of a schedule. I'm not sure the  
25 exact time it takes to do those -- those particular

1 parks. But most of the crews have a schedule where  
2 there will be multiple stops in a -- in a day before  
3 their schedule is finished.

4 Q. Do you believe that Metropolitan and Landscape,  
5 both, are being treated differently than other landscape  
6 companies under Midtown's policies?

7 A. Yes.

8 Q. In -- in what way?

9 A. Well, we talked about it. If I was a minority,  
10 I get a 10 percent advantage --

11 Q. Okay.

12 A. -- for the bid.

13 Q. Right. Is that the only way you think that  
14 your companies are treated differently from other  
15 bidders on Midtown's projects?

16 A. I guess I'm not quite understanding.

17 Q. Okay.

18 A. What do you mean by "differently"?

19 Q. Well, so we talked about Midtown's policy would  
20 give 10 points to people that were certified as minority  
21 or women-owned businesses, right?

22 A. Okay.

23 Q. And so you're saying, "Hey, Midtown is treating  
24 those certified companies differently than mine," right?

25 A. I see what you're saying, okay.

1 Q. So is there some other way, besides just the  
2 bid policy to give those 10 points, that you think  
3 Midtown is treating Metropolitan or Landscape  
4 differently than other landscape contractors?

5 A. Yeah. I -- just the scoring algorithm gives me  
6 pause for that.

7 Q. Okay. But I'm talking, other than that? I  
8 want to see if you have some other reason that --

9 A. That is different.

10 Q. -- you think --

11 A. That is different.

12 Q. Okay.

13 A. We talked about the Minority Program, that they  
14 get a 10 percent kicker to start out with.

15 Q. Okay.

16 A. But even some of this evaluation criteria  
17 doesn't seem to be fair.

18 Q. What is not fair about the evaluation criteria?

19 A. Well --

20 Q. And are you looking at Exhibit Number 9 that  
21 has the chart, or what are you looking at, sir?

22 A. I'm looking at this Exhibit 9.

23 Q. Okay. All right. I just want to be clear what  
24 you were looking at.

25 A. Sure.

1 Q. What is -- what do you believe is not fair to  
2 Metropolitan or Landscape about the bid criteria on  
3 Exhibit Number 9?

4 A. Well, for example -- I guess, you know, we've  
5 had the contract, you know, 14 out of 18 years. And  
6 yet, when you look at Organizational Qualifications and  
7 References, you think we would have scored the top  
8 amount. And the same thing with the Proposed Approach.

9 Q. Okay. Well, for Organizational Qualifications  
10 and References, Metropolitan scored 24.58 --

11 A. Why not 25?

12 Q. -- out of 25.

13 A. Why not 25? We've never had any service  
14 problems. We've never been fired. We've never -- we've  
15 always been allowed to bid on it.

16 Q. Okay.

17 A. What is the basis for --

18 Q. Okay --

19 A. How do you --

20 Q. I'm not here --

21 A. -- evaluate --

22 THE REPORTER: Whoa, whoa, whoa.

23 A. I'm sorry.

24 Q. (By Mr. Sileo) I'm not here to answer your  
25 questions. But I will tell you there has been some



1 service problems, maybe you're not aware of that. But  
2 it was a very small ding from 25 points to 24.58,  
3 correct?

4 A. So, I guess I can't ask -- you can -- you can  
5 tell me this, but I look at some of these other  
6 competitors. Since we've had this contract and we've  
7 had this relationship for so long, how can the one that  
8 was awarded the contract score a 21, when they haven't  
9 done any work for you in a long time, or do very little  
10 work for you?

11 I guess my -- my concern is, when you talk  
12 about the evaluation and what is putting us at a  
13 disadvantage, I can't see how someone that you don't  
14 have that kind of a working relationship with can score  
15 as high. I don't know how you guys established that  
16 point system. That's -- that's the problem I have with  
17 it.

18 Q. Okay. You said you had the Field Services  
19 contract before -- Metropolitan had the Field Services  
20 contract before in the past, and then they lost the  
21 contract and then you gained it back, right?

22 A. Many times.

23 Q. Okay.

24 A. It was -- it was --

25 Q. Do you know why you lost the bid in those

1 previous instances?

2 A. Oh, it was probably we were too high priced.

3 We were higher priced. You know, there were times when

4 that cont- -- we would have it for two or three years.

5 The board of directors would put it out for bid; we'd --

6 we'd get it again. And then they would put it out for

7 bid in a couple of years, and we wouldn't get it because

8 our price was a little bit too high.

9 The district always called us back. The

10 third or fourth time that happened, we had a callback

11 from the district that -- hey, will you guys -- this

12 other company is not working out. Will you guys take it

13 on at your -- at your lowered price, and we said, yes.

14 So that -- that -- that didn't work for

15 you folks. And so, there was -- we've -- when you say

16 we had poor service. You know, I think that's

17 disingenuous overall. Sure, there's going to be service

18 problems with this kind of business. But to score

19 somebody like -- to score somebody that high, when you

20 had somebody for 15 years, doesn't make sense to me. I

21 don't know how the scoring -- I don't know how you guys

22 evaluate that --

23 Q. Okay.

24 A. -- other than to maybe nudge it along.

25 Q. Do you believe that any of the prior incidents,

1 where Metropolitan lost a bid for doing work for  
2 Midtown, was because of the points that were added to a  
3 minority or woman-owned business, other than 2022 that  
4 we're talking about here?

5 A. I'm not sure when this was implemented. It  
6 doesn't seem like it was the entire time, but part of  
7 the time. I don't know if it was the last couple of  
8 times or all along. I don't remember, you know.

9 Q. Okay. So Metropolitan would be ready, willing  
10 and able to begin work for Midtown on the Field Services  
11 Project now, if asked?

12 A. Yes.

13 Q. Okay. Was Landscape ever asked to do that  
14 contract?

15 A. I don't think Midtown knows who Landscape is in  
16 that sense.

17 Q. Okay.

18 A. They know us as Metropolitan Landscape.

19 Q. So any work that y'all would do for -- for  
20 Midtown, Metropolitan would do? You wouldn't have  
21 Landscape do that work, correct?

22 A. Yeah. I think there's some confusion there.  
23 Midtown and -- or Metropolitan and Landscape are one in  
24 the same.

25 MS. WILCOX: Counsel, we've been going

1 about an hour and a half. Do we --

2 MR. SILEO: I am probably done, actually.

3 So, yeah, I'll pass the witness. So --

4 MS. WILCOX: Okay. Do you need a break?

5 I probably have about 10 or 15 minutes of -- just to

6 wrap up --

7 MR. SILEO: Yeah. Let's take a break

8 then.

9 MS. WILCOX: Just a quick break.

10 THE VIDEOGRAPHER: It's 1:10. We're off

11 the record.

12 (Break taken.)

13 THE VIDEOGRAPHER: This is the beginning

14 of File Number 3 of the deposition of Gerald Thompson.

15 The time is 1:21, and we're on the record.

16 MS. WILCOX: All right. Thank you,

17 Mr. Thompson. First, I just want to put my objection on

18 the record to Midtown's questioning without noticing the

19 depositions.

20 EXAMINATION

21 BY MS. WILCOX:

22 Q. Mr. Thompson, there was some discussion about

23 the ownership of who owns what with regard to

24 Metropolitan and Landscape. Do you recall that?

25 A. Yes.

1 Q. Okay. So you and your wife, Theresa, both own  
2 shares in Metropolitan; is that right?

3 A. Yes.

4 Q. Okay. And you wrote in the complaint in  
5 Exhibit 3 -- if you want to take a look at that exhibit  
6 again.

7 A. Exhibit 3?

8 Q. Yeah.

9 A. Okay.

10 Q. Let's go back to this. Okay. Sorry. You're  
11 gonna have to give me a minute to find it. There we go.

12 A. Which page?

13 Q. We are looking at page 3 of Exhibit 3, and this  
14 is Paragraph 8.

15 A. Okay.

16 Q. And do you see where the second sentence says,  
17 "Metropolitan is 51 percent owned by a female individual  
18 who does not exercise day-to-day control and does not  
19 qualify as an MBE under the City's MBE ordinance."

20 A. Yes.

21 Q. Okay. And that's correct?

22 A. Yes.

23 Q. Okay. And you mentioned that Metropolitan was  
24 certified as a HUB through the State of Texas; is that  
25 right?

1 A. Yes.

2 Q. And what is a HUB?

3 A. Historically Underutilized Business Enterprise.

4 Q. And you did hold that certification at one  
5 time.

6 A. Yes.

7 Q. But Metropolitan is not certified now.

8 A. Correct.

9 Q. And do you recall what the requirements were to  
10 be certified as a HUB at that time?

11 A. Not exactly. But whatever their criteria is,  
12 we complied, because they certified us. It was, you  
13 know, several documents that had to be submitted and  
14 presented to them so they could evaluate that.

15 Q. Do you know if one of those requirements were  
16 that the woman majority owner had to exercise control  
17 over the day-to-day operations of the business?

18 A. I don't think so.

19 Q. Okay. When you stopped -- why did you stop  
20 being a HUB? Why did Metropolitan stop being a HUB?

21 A. I -- I believe, I mean, this is several years  
22 ago so I'm trying to test my memory on this. But I  
23 believe that one of the criteria -- I may not be correct  
24 in this, but I think once a company goes over a million  
25 dollars in revenue, that you would no longer be

1 certified.

2 Q. Okay.

3 A. And at that time, we weren't running into a lot  
4 of contracts that required, you know, using minority  
5 subcontractors.

6 Q. Okay.

7 A. So it didn't seem to make sense to go through  
8 all that paperwork again for something that wasn't very  
9 necessary at the time.

10 Q. And do you recall if you changed your share  
11 percentages, you and Theresa, after you were no longer  
12 HUB certified by the State of Texas?

13 A. I don't remember that. I don't remember doing  
14 that.

15 Q. Okay. Does Theresa currently exercise any  
16 day-to-day control over Metropolitan?

17 A. No.

18 Q. All right. So, I believe you testified a while  
19 ago that over the last five years, about 10 percent of  
20 your income has come from the City of Houston; is that  
21 right?

22 A. It's an estimate.

23 Q. Estimate. Sure.

24 A. Wait a minute. Say -- ask that question one  
25 more time. I want to make sure I got that right.

1 Q. Yeah. I want to make sure I'm stating your  
2 testimony right. So, I think you testified that for the  
3 last five years, the companies have earned about 10  
4 percent of their income from the contracts with the City  
5 of Houston; is that right?

6 A. I -- I think I remember saying that, but I'm  
7 not quite sure if that's correct.

8 Q. What do you think the estimate would be?

9 A. You're asking me what the estimate is of this  
10 particular City contract?

11 Q. How about all -- all work from -- that you're  
12 doing with the City of Houston in the last five years.

13 A. Well, and I said, 10 percent, so that was just  
14 a quick guess on that. Well, if you do the math, we do  
15 \$3.3 million a year, and that contract is worth about  
16 200,000 a year. So, that wouldn't be 10 percent. So,  
17 it's just a math -- math error there.

18 Q. Okay.

19 A. Whatever -- whatever that works out to, you  
20 know. So, whatever 200,000 divided by -- into 3 -- 3  
21 million, that would be the percentage.

22 Q. You're asking the wrong girl. I'm a lawyer. I  
23 don't do math, but I understand that.

24 So why hasn't Landscape bid on more  
25 contracts with the City of Houston in the last five



1 years?

2 A. Well, they don't come out very often. You  
3 know, this is -- I'm not sure exactly how much  
4 landscaping work that the City -- how many contracts  
5 that they have.

6 But the one that we currently have is a  
7 pretty large contract. So, I don't know how many more  
8 they have than that one. But it's not like they come  
9 out every couple of months or every year or so. This  
10 was a five-year contract.

11 Q. Okay. And you mentioned -- you mentioned  
12 having trouble finding minority subcontractors to work  
13 with. Do you ever work with minority subcontractors who  
14 aren't certified by the City of Houston as an MBE?

15 A. Yes.

16 Q. And what kind of work do you do with them?

17 A. We subcontracted some of -- part of the work  
18 that we were doing for the City, they asked for  
19 additional services last year, about taking care of, I  
20 think, 40 of the parks, which was not part of the  
21 original contract. And we have a relationship with a  
22 company that's owned by a minority called Montex, and we  
23 asked them to join us and try to -- and complete that  
24 work. And then there was -- there was an opportunity to  
25 do up to 80 parks. But at that time we were doing 40

1 parks, and Montex was doing part of that work for us.

2 Q. Okay. And Montex is not a certified MBE with  
3 the City of Houston?

4 A. No. But the interesting thing about Montex is  
5 that they were in the cue to be certified, and the City  
6 was backlogged by, I want to say, a year before they  
7 would certify anybody else. That -- it might be less  
8 than that, but it was a long time. So we were -- we  
9 kept waiting for them to get certified so that we could  
10 be credited with the compliance with the contract.

11 Q. And you mentioned having a relationship with  
12 Montex. Why is having a relationship with your  
13 subcontractors important?

14 A. Well, it's important because we know the  
15 quality of their work. We know that they provide the  
16 insurances that are required. I guess those are the  
17 main things. We know who their employees are, and so we  
18 trust that. We trust them to do the -- perform the work  
19 that we ask them to.

20 Q. Is it your understanding that if you were  
21 certified as a -- your company was certified as an MBE  
22 with the City of Houston, that you would not have to  
23 subcontract out a portion of every contract that has an  
24 MWBE goal with the City? Is that your understanding?

25 A. Yes.

1 Q. And I wanted to ask you about -- let's see. So  
2 let's look at Exhibit 8. So, I'm on page -- it's  
3 MMD00071. It's the second page.

4 A. Yep.

5 Q. Okay. And on this you checked -- under MWDBE  
6 status, you checked the no, right?

7 A. Uh-huh.

8 Q. Okay.

9 A. Yes.

10 Q. Okay. And then let's look at Exhibit MMD --  
11 Exhibit 7, which is that single page that's MMD00229.

12 A. Yep.

13 Q. Okay. And on this exhibit you checked, where  
14 it says, "Clarify whether your company is a minority  
15 women or disadvantaged business enterprise certified by  
16 the City of Houston, Houston Minority Business Council,  
17 or the Houston's Women's Business Council," you checked,  
18 yes, right, or someone checked yes?

19 A. Someone checked yes, yes.

20 Q. But then you wrote, or someone wrote, at the  
21 bot- -- underneath that, that "Metropolitan Landscape  
22 Management has always been owned at 51 percent by  
23 Theresa M. Thompson. Metropolitan has been HUB  
24 certified by the State of Texas. Metropolitan does not  
25 have one of the three certificates requested." Is that

1 right?

2 A. That's right. It was to clarify that.

3 Q. To clarify that. Okay. So, you said in your  
4 bid to Metro -- to Midtown that you weren't a WBE,  
5 right?

6 A. Correct. It was --

7 Q. Okay.

8 A. -- obviously filled out by two different  
9 people, I mean, trying to get the bid in.

10 THE REPORTER: What? Trying to get the  
11 bid in?

12 A. Yeah. It's an oversight in that sense, not  
13 being on the same page on that, I guess.

14 Q. Yeah. Okay. And then the company clarified in  
15 writing that you were definitely not one of those --

16 A. Correct.

17 Q. -- three things --

18 A. Correct.

19 Q. -- in the bid form. Okay. So somebody just  
20 put the wrong thing basically?

21 A. Basically.

22 Q. Got it.

23 MS. WILCOX: Okay. I have no further  
24 questions.

25 MR. STEPHENS: Three questions, real

1 quick.

2 FURTHER EXAMINATION

3 BY MR. STEPHENS:

4 Q. Montex is doing different work on your City of  
5 Houston contract than the work X Scape was originally  
6 contracted to do, right?

7 A. Well, we -- we were hoping to use them -- to  
8 have them be -- to satisfy the minority contracting  
9 goal.

10 Q. Right.

11 A. Because we couldn't get any response from  
12 X Scape.

13 Q. Right. My point is just, Montex is doing  
14 different work, right? I think X Scape was supposed to  
15 do irrigation installation and you ended up not needing  
16 that. Now Montex is doing work on the parks.

17 A. Well, I don't think that's exactly clear. We  
18 have a contract that has, you know, there's a -- there's  
19 a whole list of things that have to be done at each site  
20 that were -- that we were -- that we have to provide --  
21 we have to -- we have to give 10 percent of that  
22 contract to any -- it's our choice on what 10 percent we  
23 give them. The Park work was completely outside the --  
24 the contract.

25 Q. Got it.

1 A. So, actually, that -- that work should not even  
2 have been qualified to have to have a minority  
3 subcontracting goal on it.

4 Q. I'm sorry. Are you done with your answer?

5 A. Yeah, go ahead.

6 Q. How much has Montex been paid by you?

7 A. Since when? Since --

8 Q. Since they began working as a sub on the City  
9 of Houston contract.

10 A. Oh, nice. I think we get monthly invoices from  
11 them for about 5,000.

12 Q. Okay.

13 A. Five -- give or take a little bit each month.  
14 We -- we no longer have the Parks contract, so -- and we  
15 also use them to do some work for Lone Star College --

16 Q. Okay.

17 A. -- System.

18 Q. And the work you originally contracted with  
19 X Scape to perform has been instead performed by  
20 Landscape, and Landscape hasn't been paid by the City  
21 for that work?

22 A. Yes.

23 Q. Okay.

24 MR. STEPHENS: No more questions.

25 MR. SILEO: Nothing further.

1 THE VIDEOGRAPHER: Gentleman, before we go  
2 off the record. Mr. Stephens, you ordered a copy of the  
3 video MPEG? Mr. Sileo --

4 MR. SILEO: Yes, same for me, MPEG.

5 THE VIDEOGRAPHER: Thank you, sir. It is  
6 1:34. We're off the record.

7 (Deposition concluded at 1:34 p.m.)

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Gerald Thompson  
November 06, 2024

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1 CHANGES AND SIGNATURE

2 WITNESS NAME:

DEPOSITION DATE:

3 GERALD THOMPSON

NOVEMBER 6, 2024

4 PAGE LINE CHANGE REASON

5 \_\_\_\_\_

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November 06, 2024

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1 I, GERALD THOMPSON, have read the foregoing  
2 deposition and hereby affix my signature that same is  
3 true and correct, except as noted above.

4 \_\_\_\_\_  
5 GERALD THOMPSON

6  
7 THE STATE OF  
8 COUNTY OF

9 BEFORE ME, \_\_\_\_\_, on this  
10 day personally appeared GERALD THOMPSON, known to me (or  
11 proved to me under oath or through  
12 \_\_\_\_\_) (description of identity  
13 card or other document) to be the person whose name is  
14 subscribed to the foregoing instrument and acknowledged  
15 to me that they executed the same for the purposes and  
16 consideration therein expressed.

17 Given under my hand and seal of office this  
18 \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

19  
20  
21  
22 \_\_\_\_\_  
23 NOTARY PUBLIC IN AND FOR  
24 STATE OF \_\_\_\_\_  
25 COMMISSION EXPIRES: \_\_\_\_\_

Gerald Thompson  
November 06, 2024

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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

LANDSCAPE CONSULTANTS OF )  
TEXAS, INC., and )  
METROPOLITAN LANDSCAPE )  
MANAGEMENT, INC., )  
Plaintiffs, )

v. ) Civil Action No 4:23-cv-03516

CITY OF HOUSTON, TEXAS, )  
and MIDTOWN MANAGEMENT )  
DISTRICT, )  
Defendants. )

---

ORAL DEPOSITION OF GERALD THOMPSON

November 6, 2024

---

I, Dawn McAfee, Certified Shorthand Reporter  
in and for the State of Texas, do hereby certify to the  
following:

That the witness, GERALD THOMPSON, was duly  
sworn by the officer and that the transcript of the oral  
deposition is a true record of the testimony given by  
the witness;

I further certify that pursuant to FRCP Rule  
30(e)(1) that the signature of the deponent:

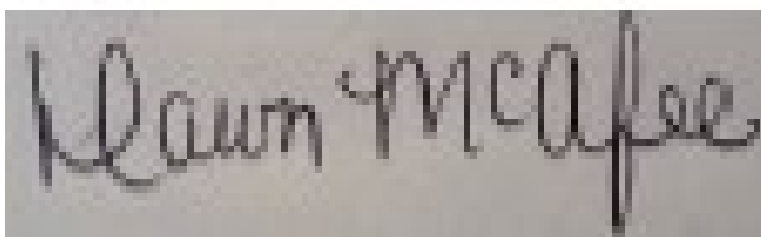
1           \_\_X\_\_ was requested by the deponent or a  
2 party before the completion of the deposition and is to  
3 be returned within 30 days from the date of receipt of  
4 the Signature Page contains any changes and the reasons  
5 therefor;

6           \_\_ was not requested by the deponent or a  
7 party before the completion of the deposition.

8           I further certify that I am neither counsel  
9 for, related to, nor employed by any of the parties or  
10 attorneys to the action in which this proceeding was  
11 taken. Further, I am not a relative or employee of any  
12 attorney of record in this cause, nor am I financially  
13 or otherwise interested in the outcome of the action.

14           Subscribed and sworn to on this \_\_\_\_\_  
15 day of \_\_\_\_\_, \_\_\_\_\_.  
16

17  
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25

A handwritten signature in dark ink, reading "Dawn McAfee", is written over a light gray rectangular background.

Dawn McAfee  
Texas CSR No. 4578  
Expiration Date: 09/30/25  
U.S. Legal Support  
16825 Northchase Drive  
Houston, Texas 77060  
Firm Registration No. 122

Gerald Thompson  
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